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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM172, Notice No. 25–161–SC]

Special Conditions: Boeing Model 747–200 (E–4B) Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–200 (E–4B) airplanes. These airplanes, modified by S.I.P. Technical Services, Inc., will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a new Flight Management System (FMS) and an Electronic Flight Instrumentation System (EFIS). The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that this system performs are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is April 24, 2000. Comments must be received on or before June 16, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM172, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM172. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ross Landes, FAA, Transport Airplane Directorate, Aircraft Certification Service, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1071; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM172.'' The postcard will be date stamped and returned to the commenter.

Background

On November 10, 1998, S.I.P. Technical Services, Inc., 10107 McAllister Freeway, San Antonio, Texas 78216–4648, applied for a supplemental type certificate (STC) to modify Boeing Model 747–200 (E–4B) airplanes listed on Type Certificate A20WE. The modification incorporates the installation of a new Flight Management System (FMS) and an Electronic Flight Instrumentation System (EFIS). The new FMS consists of three Flight Management Computers (FMC) and three Multi-Purpose Control Display Units (MCDU). The new EFIS consists of Active Matrix Liquid Crystal Display (AMLCD) Electronic Flight Instrument (EFI) units with embedded symbol generators and new control panels. The installation of these systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, S.I.P. Technical Services, Inc. must show that Boeing Model 747–200 (E–4B) airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A20WE are as follows:

The certification basis for the modified Boeing Model 747–200 (E–4B) airplanes include title 14 Code of Federal Regulations (14 CFR), part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–8, plus Amendments 25–15, 25–17, 25–18, 25–20, and 25–39.

In addition to the applicable airworthiness regulations and special conditions, the Model 747–200 (E–4B) must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–200 (E–4B) airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should S.I.P. Technical Services, Inc. apply for a supplemental

type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Boeing Model 747–200 (E–4B) airplanes will incorporate the following new design features: the installation of new Flight Management System (FMS) and Electronic Flight Instrumentation System (EFIS). The new FMS consists of three Flight Management Computers (FMC) and three Multi-purpose Control Display Units (MCDU). The new EFIS consists of Active Matrix Liquid Crystal Display (AMLCD) Electronic Flight Instrument (EFI) units with embedded symbol generators and new control panels. The installation of these systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–200 (E–4B) airplanes. These special conditions require that new electrical and electronic systems, such as the FMS and EFIS that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts per meter root-mean-square (rms) electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–200 (E–4B) airplanes modified by S.I.P. Technical Services, Inc. Should S.I.P. Technical Services, Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 747–200 (E–4B) airplanes modified by S.I.P. Technical Services, Inc. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747–200 (E–4B) airplanes modified by S.I.P. Technical Services, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 24, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–10912 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–01–AD; Amendment 39–11710; AD 2000–09–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, that requires a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; an inspection of the door wire bundle; and repair or replacement of discrepant parts. This amendment also requires, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This amendment is prompted by the FAA's determination that certain main deck cargo door systems do not provide an adequate level of safety, and that the means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked is inadequate. The actions specified by this AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

EFFECTIVE DATE: June 6, 2000.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on February 16, 2000 (65 FR 7796). That action proposed to require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; an inspection of the door wire bundle; and repair or replacement of discrepant parts. That action also proposed to require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 6 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the general visual inspections required by this AD on U.S. operators is estimated to be $360, or $60 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision and installation of associated placards required by this AD on U.S. operators is estimated to be $360, or $60 per airplane.

The FAA estimates that it will take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of this AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts will cost approximately $45,000 per airplane. Based on these figures, the cost impact of this modification required by this AD on U.S. operators is estimated to be $345,600, or $57,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–09–02 McDonnell Douglas: Amendment 39–11710. Docket 2000–NM–01–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1832SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1832SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. These procedures shall include pulling the three phase circuit breaker for the cargo door hydraulic pump. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Actions Addressing the Main Deck Cargo Door Systems

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight; and

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the required AFMS revision and placards may be removed.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on June 6, 2000.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on April 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–10673 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–4]

Revision to the Legal Description of the Hayward Air Terminal Class D Airspace Area, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Hayward Air Terminal Class D airspace area by correcting a typographical error that refers to the Metropolitan Oakland International Airport, CA, Class A airspace area. The reference should indicate the Metropolitan Oakland International Airport, CA, Class C airspace area.

EFFECTIVE DATE: June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

During a routine airspace review, an error was discovered in the legal description of the Hayward Air Terminal Class D airspace area. In this description, a reference is made to the Metropolitan Oakland International Airport, CA, Class A airspace area. This error is typographical in nature. The reference should indicate the Metropolitan Oakland International Airport, CA, Class C airspace area.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, through September 15, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations revises the legal description of the Hayward Air Terminal Class D airspace area, CA, by correcting the reference to the Metropolitan Oakland International Airport, CA, Class A airspace area to the Metropolitan Oakland International Airport, CA, Class C airspace area. This action is an administrative amendment to the legal description and will not change the actual dimensions, configuration, or operating requirements of the Hayward Class D airspace area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Hayward, CA [Amended]

Hayward Air Terminal, CA
(Lat. 37°39′34″ N, long. 122°07′21″W)
Metropolitan Oakland International Airport
(Lat. 37°43′17″ N, long. 122°13′15″ W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 3.5 mile radius of the Hayward Air Terminal and within 1.8 miles each side of the 119° bearing from the Hayward Air Terminal, extending from the 3.5 mile radius to 5.2 miles southeast of the Hayward Air Terminal, excluding that portion within the Metropolitan Oakland International Airport, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on April 12, 2000.

John Claney,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–10851 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–3]

Amendment to Class E Airspace; Cuba, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Cuba, MO.

DATES: The direct final rule published at 65 FR 9998 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on February 25, 2000 (65 FR 9998). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that on adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent of submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 14, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–10850 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–42]

Modification of Class E Airspace; Marquette, MI; Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; new effective date.

SUMMARY: On December 3, 1999, the FAA published a final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. An integral part of this airspace action is the decommissioning of the Marquette (MQT), MI, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and commissioning of the new Gwinn (GWI), MI, VOR/DME. On February 2, 2000, the effective date of this final rule was delayed until further notice due to the delay in the commissioning, due to construction, of the new Gwinn VOR/DME. The date for commissioning of the GWI VOR/DME is now expected to be August 10, 2000.

EFFECTIVE DATE: The effective date of the final rule published at 64 FR 67713 is 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION: On December 3, 1999, the FAA published a final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI (64 FR 67713). Due to a delay in construction, and subsequent commissioning, of the new Gwinn, MI, VOR/DME this airspace action could not be implemented on the original effective date.

Accordingly, on February 2, 2000, the effective date of the modification of the Class E airspace at Marquette, MI, and the revocation of the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI, was delayed until further notice (65 FR 4871). The commissioning date for the GWI VOR/DME is now expected to be August 10, 2000.

In consideration of the foregoing, the new effective date of the final rule modifying Class E airspace at Marquette, MI, and revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI (64 FR 67713, December 3, 1999) is established as August 10, 2000.

Issued in Des Plaines, Illinois on April 20, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10916 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 13, 14, and 15

Code of Federal Regulations; Authority Citations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the authority citations for several of its regulations because one of the citations was repealed by Public Law 104–128, Sec. 2, 110 Stat., 1198. This action is being taken to make the regulations accurate. It does not represent a change in agency policy and does not increase any burdens on the public.

DATES: This rule is effective May 2, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: On April 9, 1996, Public Law 104–128 was enacted which repealed 21 U.S.C. 41–50. Therefore, FDA is revising the authority citations for 21 CFR parts 10, 13, 14, and 15 to reflect this amendment.

FDA has determined that repeal of 21 U.S.C. 41–50 did not remove needed statutory authority for any current FDA regulation. Because the changes that the agency is making are not substantive and are merely ministerial changes to the Code of Federal Regulations, the Commissioner of Food and Drugs finds that there is good cause not to engage in notice and public comment procedures, which are unnecessary, or to delay the effective date of these amendments.

The agency has determined under 21 CFR 25.30(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 10, 13, 14, and 15 are amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

2. The authority citation for 21 CFR part 13 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–721; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b–263n, 264.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

3. The authority citation for 21 CFR part 14 is revised to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

4. The authority citation for 21 CFR part 15 is revised to read as follows:

Authority: 5 U.S.C. 553; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–393, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b–263n, 264.

Dated: April 24, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–10840 Filed 5–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 97–3105]

RIN 2125—AE27

Emergency Relief Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the emergency relief (ER) program to revise the threshold used in determining eligibility for a disaster from $500,000 to $700,000. The threshold is used to distinguish between heavy maintenance or routine emergency repairs and serious damage eligible under the ER program. In addition, the FHWA is amending the regulation to include the recent clarifying guidance on administering ER funding eligibility for betterment/replacement facilities, for project and project features resulting from the National Environmental Policy Act (NEPA) process, and for traffic damage caused by response vehicles. Also, this document presents changes to the ER application process; minor revisions to guidance for eligible uses; and the revised policy of delegating the approval authority to FHWA Division Administrators, previously exercised by the Federal Highway Administrator, to make the initial ''finding'' approving ER assistance for a new disaster and related administrative procedural changes.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mohan P. Pillay, Office of Program Administration, 202–366–4655, or Harold Aikens, Office of the Chief Counsel, 202–366–0764, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The changes to the FHWA's ER regulations embraced in this final rule were developed based on the comments made to a notice of proposed rulemaking (NPRM) on this subject published in the **Federal Register** on June 7, 1999, at 64 FR 30263 (FHWA Docket No. 97–3105). This NPRM was published based on an advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** on February 19, 1998, to generate discussion and comments on the appropriateness of the previous threshold value, as well as any additional options/concepts regarding establishment of a disaster eligibility threshold. Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket 97–3105 on or before August 6, 1999. Comments were received from 11 entities. The commenters include: 8 State Departments of Transportation (DOT), 1 county government, 1 State Association of County Engineers, and the American Road and Transportation Builders Association (ARTBA). All comments received in response to amendments in the NPRM have been considered in adopting this final rule.

The current FHWA regulations implementing the emergency relief program are found primarily at 23 CFR part 668. Subpart A of part 668 sets forth the procedures for the administration of ER funds for the repair or reconstruction of Federal-aid highways. This final rule amends these regulations in the following manner and for the reasons indicated below.

ER Threshold

After considering all comments received, the FHWA has decided to increase the threshold to $700,000. In § 668.105(j), the second sentence is being amended by replacing $500,000 with $700,000. This amendment is made to reflect the change in the current purchasing power of the dollar based on the increase in the composite bid price index for Federal-aid highway construction from 1987 to 1997. The FHWA plans to periodically review the threshold and adjust it, as appropriate, through future rulemakings. In exceptional circumstances, such as in the case of Territories and in States with small highway programs, a disaster under the $700,000 threshold could be considered eligible for ER funding, as has been the case with damage in the range of $500,000 or slightly less under the previous disaster eligibility threshold.

Of the comments received with regard to the ER threshold, seven opposed and two supported the increase in the threshold. One commenter expressed concern about the effect the increase could have on a local agency when the disaster is isolated to a small area of the State and substantial amount of damage costs would be incurred by a local agency, yet the $700,000 threshold is not met statewide. Another commenter suggested that the threshold should be determined by using a tier system that would insure fairness to those States which have a lesser ability to cope with disasters.

One of the arguments by commenters against revising the existing threshold is that they allege it would create extreme hardship on local units of government, which have very limited resources, and could force States and local governments to divert funds from other pressing State and local highway investments. Commenters also assert that they do not have the flexibility to shift resources from other areas to cover the cost of road damage due to a natural disaster. Another comment was that the cumulative budgetary impact for the State Department of Transportation and for the local municipalities can be significant during times of multiple events within a short time span. The commenters provided no explanation or evidence why it was appropriate or feasible for the Federal government, rather than the State governments, to pay these costs from its very limited resources.

One commenter referred to the ANPRM and pointed out that ''only 20 percent of disasters funded in1996 involved sums of less than $1 million and this suggests that a threshold of $500,000 is not causing FHWA to be flooded with small applications for disaster relief and that FHWA is proposing to fix a problem that simply does not exist.'' The principle reason the FHWA is increasing the threshold is not to reduce the financial and/or administrative burden of this program on the Federal government; rather, the increase to the threshold reflects the change in purchasing power of the dollar since the $500,000 threshold was established in 1987.

Since the proposed rulemaking allows for a disaster under the $700,000 threshold to be considered in exceptional circumstances for States

with small highway programs, one commenter recommended that consideration also be given to local agencies where there is a substantial amount of damage even though the $700,000 threshold was not met statewide. This recommendation would mean that any State where a local agency sustained a substantial amount of damage, but below the $700,000 threshold, could qualify for the ER program funding assistance. This approach would defeat the very purpose of the threshold concept, and, therefore the FHWA has not adopted this recommendation.

One commenter wanted all public highway facilities to be eligible for the ER program by including those non-Federal-aid highway facilities currently eligible for the Federal Emergency Management (FEMA) public assistance program. The Congress, by statute, has limited the ER program to Federal-aid highways and roads on Federal lands. Any change to have the ER program cover all public roads would require a statutory amendment and is beyond the scope of this rulemaking activity. Also, the commenter states that repair costs for both damaged Federal-aid and non-Federal-aid highways should be considered when determining whether an event meets the threshold under the ER program. The FHWA does not agree with this concept. Since the ER program is limited by statute to repair of Federal-aid highways, determinations of the extent of damage necessary to trigger ER funding for an event should be directly related to eligible repair costs under the ER program.

One commenter is of the opinion that determining the threshold based on a tiered system would insure fairness to those States which have a lesser ability to cope with disasters that should meet a higher threshold to be eligible under the ER program. The FHWA believes that counties and other local agencies would not be treated equally from State to State if a tiered approach is adopted. For example, a county whose Federal-aid highways that have sustained $1.5 million of eligible ER repair costs, but located in a State where the ER eligibility threshold is set at $2 million, would not receive any benefits from the FHWA ER program funds. On the other hand, another county with the same amount of damage, but located in a State with a $1 million threshold, would be eligible to receive ER assistance.

One commenter expressed concern about the application of the threshold to basin flooding situations. It is FHWA's position that the threshold would normally be applied to each individual basin; however, situations can arise where several basins in close proximity can be treated as one event for application of the threshold.

ER Program Administration

The regulation is being amended to include recent clarifying guidance on administering the ER program. Also, amendments are included to reflect the recent revised procedure that delegated the approval authority to the FHWA Division Administrator to make the initial ''finding'' approving ER assistance for a new disaster, and to incorporate related administrative and procedural changes to the ER program. The revised procedure on delegation of approval authority is considered a matter relating to internal agency management. Prior notice and comment are unnecessary under the Administrative Procedure Act or under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations,'' dated May 22, 1980.[1]

In § 668.103, a definition for ''betterments'' is being added. Because there has been a wide variety of interpretations, this addition will clarify guidance for determining ER funding eligibility and clearly establish the meaning of the term for the purposes of the FHWA's ER program. There was no opposition in the discussion of this term in the regulation.

One commenter expressed concern that the phrase ''rebuilding of roadways at a higher elevation'' included in the betterment definition conflicts with § 668.109(b)(8) relative to grade raises made necessary by long term loss of use of a highway due to basin flooding. It is noted that typically the repair of a road damaged due to basin flooding involves raising the grade of the road which does not require justification as a betterment as long as the proposed grade raise is reasonable and limited to critical Federal-aid highways. The FHWA agrees that clarification is helpful, and is modifying § 668.109(b)(8) to clearly indicate that grade raises associated with basin flooding are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6).

Also, § 668.103 is being amended to modify the definition of ''emergency repairs'' by replacing the word ''travel'' with the word ''traffic'' to be consistent with other uses of this phrase in title 23, United States Code, and in this regulation concerning the ER program.

In § 668.109(b)(6), the phrase ''such as relocation, replacement, upgrading or other added features not existing prior to the disaster,'' is being removed to eliminate confusion in interpreting the term ''betterments'' for the ER funding eligibility determination. Neither relocation or replacement of a highway facility is always considered a betterment under the ER program. There were no comments concerning the recommended change.

Section 668.109(c)(2)(i) is being amended to insert the term ''to any public road'' after the word ''damage'' to further clarify the meaning of the sentence. No comments were received on this change.

Section 668.109(c)(2)(iii) is being amended to expand the eligibility of ER funds to repair damages to Federal-aid highways caused by vehicles making repairs to other transportation facilities as well as by vehicles, such as fire engines or trucks removing debris, which are responding to a disaster. No comments were received on this change.

Section 668.109(c)(8) is being amended to add the term ''including snow and ice removal'' after the word ''system.'' This will clarify that snow and ice removal are part of the other normal maintenance activities and are not eligible for ER funding. No comments were received on this change.

Section 668.109 (d) is being amended to further clarify the guidance on eligibility of replacement highway facilities, particularly in those special cases where replacement of a damaged highway is not practical or feasible at its existing location, and an alternative is developed through the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) process. No comments were received concerning on this change.

Section 668.113(b)(1) is being revised to reflect the current project procedures. The reference to ''the certification acceptance procedures found in 23 U.S.C. 117'' is being eliminated because the method using certification acceptance procedures in administering Federal-aid projects has been eliminated from title 23, U. S. Code, by the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107(1998) No comments were received concerning this change.

Several sections of the regulation are amended to reflect the recently revised procedure which delegated to the FHWA Division Administrator the approval authority to determine whether an event qualifies for ER assistance. Previously this approval authority rested with the Federal Highway Administrator in the Washington Headquarters, and the requests for an ER determination with supporting documents from the FHWA

[1] This document is available for inspection and copying as prescribed in 49 CFR part 7.

Division offices had to be sent to the Federal Highway Administrator for approval. By delegating this approval authority to the FHWA Division Administrator, the agency's determination should be made more quickly, thus providing prompt affirmation to State and local highway officials concerning the eligibility of an event for ER assistance and also allowing permanent repair work to commence sooner. Accordingly, this approval action change will also require further changes to the regulation involved with preparation and submission of information supporting the request for ER funding for an event. The sections of the regulation being amended are described below:

1. Sections 668.105(j) and 668.109(a) indicate to show that the FHWA Division Administrator, instead of the Federal Highway Administrator, is making the determination as to whether an event qualifies for ER assistance; and

2. Section 668.111 covering application procedures, reflect that the approval authority now rests with the FHWA Division Administrator. A field report will no longer be required. Instead, a damage survey summary report is to be prepared which will provide a factual basis for the FHWA Division Administrator to make a determination that serious damage has occurred to Federal-aid highways. The damage survey summary report should include by political subdivision or other recognized geographic boundaries, a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction of damaged Federal-aid highway in each jurisdiction. Use of the ''Quick Release'' method for an ER application and determination will also be incorporated into the procedures.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking proposes to amend current regulations implementing the emergency relief program to revise the ER eligibility threshold established 10 years ago, as well as to incorporate changes made to clarify the guidance on the ER program. It is not anticipated that these changes would affect the total Federal funding available under the ER program. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

The economic impact on States and local jurisdictions would be minimal because the increase in threshold value is kept at a minimum level only to account for inflation based on the increase in the composite index for Federal-aid highway construction from 1987 to 1997. These amendments clarify and simplify procedures used for providing emergency relief assistance to States in accordance with the existing laws, regulations and guidance. The ER funds received by the States are not significantly affected by this final rule. In any event, States are not included in the definition of ''small entity'' set forth in 5 U.S.C. 601. Therefore, this action will not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the FHWA must prepare a budgetary impact statement on any proposal or final rule that includes a Federal mandate that may result in estimated annual costs to State, local or tribal government of $100 million or more. The Congressional Budget Office has also concluded that Pub. L. 105–117 would impose no Federal mandates, as defined in the Unfunded Mandates Reform Act, and would impose no significant costs on State, local, or tribal government. The FHWA concurs in that conclusion, and does not intend to impose any duties upon State, local, or tribal governments beyond those prescribed by Pub. L. 105–117.

Executive Order 12988 (Civil Justice Reform)

This action meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of

Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 668

Emergency relief program, Grant programs-transportation, Highways and roads.

Issued on: April 25, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 668 as set forth below:

PART 668— EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 continues to read as follows:

Authority: 23 U.S.C. 101, 120(e), 125, and 315; 49 CFR 1.48(b)

Subpart A—Procedures for Federal-Aid Highways

2. Section 668.103 is amended by adding in alphabetical order the term ''Betterments'', and by amending the term ''Emergency repairs'' by revising paragraph (3) to read as follows:

§ 668.103 Definitions.

* * * * *

Betterments. Added protective features, such as rebuilding of roadways at a higher elevation or the lengthening of bridges, or changes which modify the function or character of a highway facility from what existed prior to the disaster or catastrophic failure, such as additional lanes or added access control.

* * * * *

Emergency Repairs * * *

(3) Restoring essential traffic.

* * * * *

§ 668.105 [Amended]

3. Section 668.105(j), is amended by removing the figure ''$500,000 and adding in its stead the figure ''$700,000'' and by moving the term ''FHWA Administrator'' and adding the term ''FHWA Division Administrator.''

* * * * *

§ 668.107 [Amended]

4. Section 668.107(b) is amended by removing the last sentence.

* * * * *

5. Section 668.109 is amended by revising paragraphs (a), introductory text, (b)(6), (b)(8), (c)(2)(i) and (iii), (c)(8), and (d) to read as follows:

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

* * * * *

(b) * * *

(6) Betterments, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of betterment against the risk of eligible recurring damage and the cost of future repair;

* * * * *

(8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame. Such grade raises are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6); and

* * * * *

(c) * * *

(2) * * *

(i) Repair of surface damage to any public road caused by traffic making repairs to Federal-aid highways.

* * * * *

(iii) Repair of surface damage to Federal-aid highways caused by vehicles responding to a disaster; provided the surface damage has occurred during the first 60 days after a disaster occurrence, unless otherwise approved by the FHWA Division Administrator.

* * * * *

(8) Other normal maintenance and operation functions on the highway system including snow and ice removal; and

* * * * *

(d) Replacement of a highway facility at its existing location is appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and is limited in ER reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life. Where it is neither practical nor feasible to replace a damaged highway facility in kind at its existing location, an alternative selected through the National Environmental Policy Act (NEPA) process, if of comparable function and character to the destroyed facility, is eligible for ER reimbursement.

* * * * *

6. Section 668.111 is revised to read as follows:

§ 668.111 Application procedures.

(a) *Notification.* As soon as possible after the disaster, the applicant shall notify the FHWA Division Administrator of its intent to apply for ER funds.

(b) *Damage survey.* As soon as practical after occurrence, the State will make a preliminary field survey, working cooperatively with the FHWA Division Administrator and other governmental agencies with jurisdiction over eligible highways. The preliminary field survey should be coordinated with the Federal Emergency Management Agency work, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible highways.

(1) A damage survey summary report is to be prepared by the State. The purpose of the damage survey summary report is to provide a factual basis for the FHWA Division Administrator's finding that serious damage to Federal-aid highways has been caused by a natural disaster over a wide area or a catastrophe. The damage survey summary report should include by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction for damaged Federal-aid highways in each jurisdiction. Pictures showing the kinds and extent of damage and sketch maps detailing the damaged areas should be included, as appropriate, in the damage survey summary report.

(2) Unless very unusual circumstances prevail, the damage survey summary report should be prepared within 6 weeks following the applicant's notification.

(3) For large disasters where extensive damage to Federal-aid highways is readily evident, the FHWA Division Administrator may approve an application under § 668.111(d) prior to submission of the damage survey summary report. In these cases, an abbreviated damage survey summary report, summarizing eligible repair costs by jurisdiction, is to be prepared and submitted to the FHWA Division Administrator after the damage inspections have been completed.

(c) *Application.* Before funds can be made available, an application for ER must be made to, and approved by the FHWA Division Administrator. The application shall include:

(1) A copy of the Governor's proclamation, request for a Presidential declaration, or a Presidential declaration; and

(2) A copy of the damage survey summary report, as appropriate.

(d) *Approval of application.* The FHWA Division Administrator's approval of the application constitutes the finding of eligibility under 23 U.S.C. 125 and shall constitute approval of the application.

7. Section 668.113 is amended in paragraph (a), last sentence, by removing ''field report'' and adding ''damage survey summary report'', and by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 668.113 Program and project procedures

* * * * *

(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures. In those cases where a regular Federal-aid project in a State similar to the ER project would be handled under the project oversight exceptions found in title 23, United States Code, the ER project can be handled in a similar fashion subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on all ER projects. The FHWA Division Administrator has the discretion to undertake final inspections on ER projects as deemed appropriate.

* * * * *

(3) Emergency repair meets the criteria for categorical exclusions pursuant to 23 CFR 771.117 and normally does not require any further NEPA approvals.

[FR Doc. 00–10780 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4423–C–08]

RIN 2577–AB87

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; amendment.

SUMMARY: On March 16, 2000, HUD published its final rule to implement the new formula system for allocation of funds to public housing agencies for their capital needs. This rule makes one amendment to the March 16, 2000 final rule to correct the regulatory provision concerning performance awards for high performing PHAs.

DATES: *Effective Date.* June 1, 2000.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2000 (65 FR 14422), HUD issued its final rule to implement the new formula system for allocation of funds to public housing agencies for their capital needs, as required by statute. The March 16, 2000 final rule followed publication of a September 14, 1999 proposed rule which was developed through the negotiated rulemaking process, and which took into consideration public comment received on the proposed rule. This rule amends the March 16, 2000 final rule to correct an error concerning performance awards for high performing PHAs.

In the preamble to the final rule, HUD stated that § 905.10(j) of the proposed rule, which addresses the performance reward factor, was revised at the final rule stage to reflect the status of implementation of the Public Housing Assessment System (PHAS). (See 65 FR 14423, first column.)

Section 905.10(j)(3) of the rule text provided as follows:

The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 2000, March 31, 2001, June 30, 2001, and September 30, 2001, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years. (See 65 FR 14429, third column)

The regulatory text, however, did not accurately reflect the status of implementation of PHAS. The final rule that made amendments to the PHAS was published on January 11, 2000 (65 FR 1712), and took effect on February 10, 2000. The PHAS final rule provides that the first PHAS scores will be issued for PHAs with fiscal years ending on or after March 31, 2000, and therefore these PHAs will be the first to be eligible for a performance award. Given the January 11, 2000 PHAS final rule, § 905.10(j)(3) of the Capital Fund final rule did not reflect the status of implementation of PHAS, as the preamble to the Capital Fund rule advised that this section would.[1]

To correct the inconsistency between the preamble and the regulatory text in the March 16, 2000 final rule, HUD is amending the March 16, 2000 final rule to remove paragraph (3) of § 902.10(j). On further consideration, HUD determined that there is no need for the rule to list the dates when PHAs will be eligible for performance awards under the Capital Fund Formula based on PHAS scores. As noted in the preamble, PHAs are eligible for a performance award upon receipt of their PHAS scores (whenever the PHAS scores are issued) and if they are designated high performers under PHAS.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. The purpose of this rule is limited to amending an error in the March 16,

[1] The PHAS Transition Notice issued by HUD on October 21, 1999 (64 FR 56677) advised that PHAs with fiscal years ending September 30, 1999, or December 31, 1999, would receive PHAS advisory scores. The January 11, 2000 PHAS final rule is consistent with the transition notice in providing that the first PHAS scores will be issued for PHAs with fiscal years ending on or after March 31, 2000.

2000 Capital Fund final rule. The preamble explained how the rule would address implementation of the performance award factor of the Capital Fund Formula. As explained in the preamble, implementation of the performance award factor would coincide with implementation of PHAS. The regulatory text of the Capital Fund final rule, however, inadvertently failed to accurately reflect implementation of PHAS, as provided in the January 11, 2000 PHAS final rule. This rule therefore amends the March 16, 2000 final rule to correct this inconsistency.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared in connection with the September 14, 1999 proposed rule in accordance with the HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4223). That Finding is applicable to this final rule, and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

This rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The final rule is limited to amending the March 16, 2000 Capital Fund final rule to correct an error in the rule concerning implementation of the performance award factor. The regulatory flexibility analysis provided in the March 16, 2000 final rule is applicable to this rule.

Federalism Impact

This final rule does not have federalism implications. The rule does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 905 of title 24 of the Code of Federal Regulations is amended as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

1. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

§ 905.10 [Amended]

2. Section 905.10 is amended by removing paragraph (j)(3).

Dated: April 21, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–10798 Filed 5–1–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–009]

RIN 2115–AE46

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the Navy Crew Rowing Race, a marine event to be held April 29 and May 26, 2000 on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.518 is effective from 6 a.m. to 10 a.m. on April 29 and from 6 a.m. to 10 a.m. on May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor the Navy Crew Rowing Races on the waters of the Severn River at Annapolis, Maryland. The event will consist of Navy crew rowing teams in competition with other crew rowing teams from other universities. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 11, 2000.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 00–10846 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–007]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the L&N Railroad / Old Gentilly Road drawbridge across the Inner Harbor Navigation Canal, mile 2.9 at New Orleans, Orleans Parish, Louisiana. This deviation allows the Port of New Orleans to close the bridge to navigation from 7 a.m. to 5 p.m. and from 6:30 p.m. to 5:30 a.m. daily from Monday, July 31, 2000 through Sunday, August 13, 2000.

Presently, the draw is required to open on signal. This temporary deviation is issued to allow for replacement of the damaged south roadway grating.

DATES: This deviation is effective from 7 a.m. on Monday, July 31, 2000 through 5 p.m. on Sunday, August 13, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The L&N bascule drawbridge across the Inner Harbor Navigation Canal, mile 2.9, in New Orleans, Orleans Parish, Louisiana, has a vertical clearance of one foot above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with small ships, tows, fishing vessels, sailing vessels, and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the deck grading. As sections are replaced, the bascule span requires balancing, a time consuming operation which must be accomplished without interruption.

This deviation allows the draw of L&N Railroad/Old Gentilly Road bascule span drawbridge across the Inner Harbor Navigation Canal, mile 2.9, at New Orleans, Orleans Parish, Louisiana to remain closed to navigation daily from 7 a.m. to 5 p.m. and from 6:30 p.m. to 5:30 a.m. from Monday, July 31, 2000 through Sunday, August 13, 2000. In the event of an approaching tropical storm or hurricane, the draw will return to normal operation within 12 hours notice from the Coast Guard.

Dated: April 11, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 00–10847 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OK–19–1–7453a; FRL–6582–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the Oklahoma Department of Environmental Quality (ODEQ) on November 17, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWI). The EG require States to develop plans to reduce toxic air emissions from all MWIs.

DATES: This direct final rule is effective on July 3, 2000, without further notice, unless we receive adverse comments by June 1, 2000. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Lt. Commander Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Oklahoma Department of Environmental Quality offices, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Lt. Commander Mick Cote at (214) 665–7219.

SUPPLEMENTARY INFORMATION:

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VI. What steps do I need to take?
VII. Administrative Requirements.

I. What Action Is Being Taken by EPA Today?

We are approving the Oklahoma State Plan, as submitted on November 17, 1999, for the control of air emissions from MWIs, except for those MWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for MWIs, we also developed EG to control air emissions from older MWIs. See 62 FR 48348–48391, September 15, 1997. The ODEQ developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective July 3, 2000, unless by June 1, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective July 3, 2000.

II. Why Do We Need To Regulate MWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occurs mainly through the ingestion of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing

respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system. We estimate that this State Plan will reduce mercury emissions from MWIs in Oklahoma by approximately 94 percent, hydrochloric acid emissions by 98 percent, and dioxin/furan emissions by 95 percent.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to enforce it.

IV. What Does the Oklahoma State Plan Contain?

The ODEQ adopted the EG into its body of regulations at OAC 252:100–17, Part 7 and Appendix M on October 19, 1999. The Oklahoma State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State Rule OAC 252:100–17, Part 7 and Appendix M as the enforceable mechanism;
3. An inventory of approximately 33 known designated facilities, along with estimates of their toxic air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date no later than September 16, 2002;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing; and,
8. Provisions for progress reports to EPA.

The Oklahoma State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* A detailed discussion of our evaluation of the Oklahoma State Plan is included in our technical support document, located in the official file for this action.

V. Is My MWI Subject to These Regulations?

The EG for existing MWIs affect any MWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

You must meet the requirements in OAC 252:100–17, Part 7 and Appendix M, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity; as an alternative, you can elect to accept a permit restriction to limit the amount of waste you may burn per hour.
2. Each size category of MWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. See 40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997.
3. There are provisions to address small rural incinerators. See 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997.
4. You must meet a 10 percent opacity limit on your discharge, averaged over a six-minute block. See 40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997.
5. You must have a qualified MWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c). See 40 CFR 60.34e, as listed at 62 FR 48380.
6. Your operator must be certified, as discussed in 4 above, no later than one year after we approve this Oklahoma State Plan. See 40 CFR 60.39e(e), as listed at 62 FR 48382. You must develop and submit to ODEQ a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to ODEQ no later than one year after we approve this State Plan. See 40 CFR 60.35e, as listed at 62 FR 48380.
7. You must conduct an initial performance test to determine your incinerators compliance with these emission limits. See 40 CFR 60.37e and 60.8, as listed at 62 FR 48380.
8. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec. See 40 CFR 60.37e(c), as listed at 62 FR 48381.
9. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years. See 40 CFR 60.38e, as listed at 62 FR 48381.
10. You must report to ODEQ the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager. See 40 CFR 60.38e, as listed at 62 FR 48381.
11. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date. See 40 CFR 60.39e, as listed at 62 FR 48381.

VII. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Plan submission, to use VCS in place of a Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2000.

Jerry Clifford,

Acting Regional Administrator Region 6.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7617q.

Subpart LL—Oklahoma

2. Section 62.9100 is amended by adding paragraphs (b)(5), (c)(4), and (c)(5) to read as follows:

§ 62.9100 Identification of plan.

* * * * *

(b) * * *

(5) Control of air emissions from designated hazardous/medical/infectious waste incinerators, submitted by the Oklahoma Department of Environmental Quality on November 17, 1999 (OAC 252:100–17, Part 7).

* * * * *

(c) * * *

(4) Municipal solid waste landfills.

(5) Hazardous/medical/infectious waste incinerators.

3. Subpart LL is amended by adding a new § 62.9170 and a new undesignated center heading to read as follows:

Air Emissions From Hazardous/Medical/Infectious Waste Incinerators

§ 62.9170 Identification of sources.

The plan applies to existing hazardous/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

4. Subpart LL is amended by adding a new § 62.9171 and a new undesignated center heading to read as follows:

Effective Date

§ 62.9171 Effective date.

The effective date for the portion of the plan applicable to existing hazardous/medical/infectious waste incinerators is July 3, 2000.

[FR Doc. 00–10761 Filed 5–1–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA75

Summary Distribution

AGENCY: Office of Hearings and Appeals, Office of the Secretary, Interior.

ACTION: Technical amendment.

SUMMARY: The Office of Hearings and Appeals (OHA) today is making a technical change to its rules regarding summary distribution of decedents estates as published on August 24, 1999, (64 FR 46152). Under the existing regulations, Bureau of Indian Affairs (BIA) Superintendents are identified as the authority to make summary distributions when an Indian dies intestate leaving only trust personal property or cash valued at less than $5,000. The appeals procedure for OHA acknowledges appeals from summary distribution decisions made by BIA superintendents. The technical change now refers only to ''the Bureau of Indian Affairs'' as the authority for making summary distribution decisions (and against whom an aggrieved party may appeal to OHA), recognizing the authority of the BIA to designate the superintendent, or other officials as may

be appropriate, to make such summary distribution decisions.

EFFECTIVE DATE: May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Telephone: 703/235–3810.

SUPPLEMENTARY INFORMATION: This technical amendment is being published pursuant to the revised High Level Implementation Plan (HLIP) filed with the U.S. District Court for the District of Columbia in connection with the *Cobell* v. *Babbitt* case. Among other representations in the HLIP, the Department of the Interior has committed to making a technical amendment to the summary distribution regulations at 43 CFR 4.271. The Department has further committed to promulgate this technical amendment by April 30, 2000. The technical amendments to sections 4.271 and 4.320 of 43 CFR do not impact the substance of the regulations but increase the flexibility of the Department to direct resources as appropriate to the caseload of pending summary distribution cases. Consequently, the technical amendment acknowledges the authority of the BIA to delegate its authority to make such summary distribution decision to other BIA officials as deemed qualified to perform this function. Pursuant to 5 U.S.C. 553(b), public comment is not required for this technical amendment as this amendment does not make any substantive regulatory change and simply promotes administrative efficiency. Pursuant to 5 U.S.C. 553(d), the rulemaking will take effect immediately for good cause as the caseload of the BIA for summary distribution of Indian decedents' estates and the HLIP require, as may be appropriate, the delegation of certain other qualified officials of the BIA other than its agency superintendents.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims, Indians, Public lands.

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.271 is revised to read as follows:

§ 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than $5,000, not including any interest that may have accrued after the death of the decedent, the Bureau of Indian Affairs will assemble the apparent heirs and hold an informal hearing to determine the proper distribution of the estate, unless it appears that the decedent left a last will and testament intending to devise his estate, and/or the decedent dies possessed of an interest in trust or restricted real property. A memorandum covering the hearing will be retained in the agency files showing the date of the decedent's death, the date of the hearing, the persons notified and attending the hearing, the amount on hand, and its disposition. In the disposition of such funds, the Bureau of Indian Affairs will credit the balance, if any, to the legal heirs. When requested by the Bureau of Indian Affairs, an administrative law judge may assume jurisdiction to dispose of creditors' claims or to make distribution determinations if the administrative law judge finds that exceptional circumstances exist. A party in interest may appeal a distribution determination in accordance with 43 CFR 4.320.

3. Section 4.320 is amended by revising the introductory text to read as follows:

§ 4.320 Who may appeal.

A party in interest has a right to appeal to the Board of Indian Appeals from an order from an administrative law judge on a petition for rehearing, petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate, and also from a summary distribution order made by the Bureau of Indian Affairs or an administrative law judge pursuant to § 4.271.

* * * * *

Dated: April 26, 2000.

John Berry,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 00–10869 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–RK–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[PR Docket No. 92–115; FCC 00–131]

Revision of the Commission's Rules Governing the Public Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: In this document, the Commission dismisses in part, and grants in part thirty-seven petitions for reconsideration filed against an earlier Federal Communications Commission (Commission) order. The Commission also dismisses a petition for declaratory ruling filed by Graceba Total Communications, Inc. (Graceba) regarding Basic Exchange Telephone Radio Systems (BETRS). These actions are taken because most of the issues raised on reconsideration have either been resolved or rendered moot by the transition to geographic area licensing in the paging services. The other issues were rendered moot by the Universal Licensing System (ULS) proceeding which streamlined the application, assignment, and transfer processes according to the Commission's rules to facilitate the development and use of the ULS. The Commission also grants various petitions because any disadvantages to permitting shared use are outweighed by the cost efficiencies to licensees and creates a potential cost savings to the public. With regards to the Graceba petition, this action was taken because the issue was resolved in a previous Commission order.

DATES: Effective May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Don Johnson, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7444.

SUPPLEMENTARY INFORMATION: This Memorandum Opinion and Order on Reconsideration in CC Docket No. 92–115, adopted April 6, 2000 and released April 17, 2000 is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/index2.html*.

Synopsis of *Memorandum Opinion and Order on Reconsideration:* In (MO&O on Reconsideration), the Commission disposes of 37 petitions for reconsideration (petitions) regarding various issues addressed in the *Part 22 Rewrite Order*. We grant various petitions to the extent they seek reconsideration of our policy prohibiting the use of shared transmitters by Part 22 licensees. With respect to all other issues addressed, we dismiss or deny the petitions. Additionally, we dismiss a petition for

declaratory ruling filed by Graceba Total Communications, Inc. (Graceba) regarding Basic Exchange Telephone Radio Systems (BETRS).

1. In this *MO&O on Reconsideration*, the Commission disposes of 37 petitions for reconsideration (petitions) regarding various issues addressed in the *Part 22 Rewrite Order,* 60 FR 3555 (1995). We grant various petitions to the extent they seek reconsideration of our policy prohibiting the use of shared transmitters by Part 22 licensees. With respect to all other issues addressed, we dismiss or deny the petitions. Additionally, we dismiss a petition for declaratory ruling filed by Graceba Total Communications, Inc. (Graceba) regarding Basic Exchange Telephone Radio Systems (BETRS).

Discussion

2. Most of the issues raised on reconsideration of the *Part 22 Rewrite Order* have either been resolved in or rendered moot by subsequent proceedings. For example, several parties raised issues relating to site-by-site licensing of paging systems. These issues have been rendered moot by the transition to geographic area licensing in the paging services. Other licensing issues were addressed in or rendered moot by the Universal Licensing System Proceeding in which we streamlined our application and assignment and transfer processes for Part 22 licenses. To the extent the issues have not been effectively addressed elsewhere, except as discussed, in this section, the petitions raise a variety of minor issues involving procedural requirements and operational rules affecting Part 22 licensees. We find these arguments unpersuasive, and in many respects they only repeat arguments that we considered and rejected previously in this proceeding. Nothing in the record as it now stands warrants alteration of any decisions addressed in the petitions, except for the reversal of our policy regarding the use of shared transmitters by Part 22 licensees.

3. We note in particular that several petitioners seek reconsideration of the rule requiring cellular mobile transmitters to have a unique and unalterable Electronic Serial Number (ESN). Petitioners argue generally that this rule unnecessarily restricts legitimate activities and that it is not the most effective method of combating fraud. Since the record in this proceeding was compiled in 1994, anti-fraud practices, technologies and the market for cellular services have changed considerably, and in addition, Congress has passed potentially relevant legislation. We therefore find that the current record is not useful for evaluating the continued need for or appropriate form of the cellular ESN rule. We further conclude that nothing in the *Part 22 Rewrite Order* improperly adjudicated the rights of parties under the preexisting cellular system compatibility rule in violation of the Administrative Procedure Act, and that nothing in our discussion of cellular ESNs was improperly based on undisclosed *ex parte* contacts. We therefore deny the petitions relating to the cellular ESN rule. We will, however, review the cellular ESN rule as part of our upcoming biennial review of regulations affecting providers of telecommunications services.

4. Several petitioners also seek reconsideration of the uncodified policy stated in paragraph 71 of the *Part 22 Rewrite Order*, which prohibits the use of shared transmitters by Part 22 licensees. On January 10, 1995, before the *Part 22 Rewrite Order* became effective, the Commission stayed the policy prohibiting the use of shared transmitters. In the *Part 22 Rewrite Order*, the Commission prohibited the use of shared transmitters because it was concerned about issues regarding the control and responsibility for these transmitters, and because it was concerned that outages of shared transmitters would cause broad service disruptions. In the *Stay Order,* 60 FR 3555 (January 18, 1995), the Commission recognized that it had previously allowed dual licensing of Part 22 transmitters and was continuing to allow dual licensing in the part 90 private paging services, and that its new policy could result in inconsistent treatment of similar services. In addition, the Commission noted that outages are more likely to be detected and corrected if a transmitter is used by multiple licensees. The *Stay Order* has remained in effect for approximately five years. In light of the apparent lack of problems with the use of shared transmitters in the Part 22 and Part 90 services to date, we conclude that any disadvantages to permitting shared use are outweighed by the cost efficiencies to Part 22 licensees and potential cost savings to the public. Therefore, we grant the various petitions to the extent they seek reconsideration of this policy, lift the stay, and reverse the uncodified policy prohibiting the shared use of transmitters.

5. On December 19, 1994, Graceba filed a request for declaratory ruling (request) regarding Basic Exchange Telephone Radio Systems (BETRS). Graceba requests that the Commission specify the required grade of service in evaluating BETRS applications. We have dealt extensively with BETRS issues in the *Paging Systems Reconsideration Order*. Therefore, pursuant to our discretion under § 1.2 of the Commission's rules, we decline to issue a declaratory ruling and we dismiss Graceba's request.

Procedural Matters

6. *Paperwork Reduction Act of 1995 Analysis.* The policy changes adopted in this *MO&O on Reconsideration* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and impose no new or modified information collection requirements on the public.

7. *Supplemental Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a final regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). We certify that the policy change adopted in this *MO&O on Reconsideration* will not have a significant economic impact on a substantial number of small business entities because the previous policy was never enforced or codified in the Commission's rules.

Ordering Clauses

8. Pursuant to sections 1, 4(i), 4(j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i),154(j), and 405, and section 1.106, of the Commission's rules, 47 CFR 1.106, the petitions for reconsideration of the *Part 22 Rewrite Order* are granted to the extent they seek reconsideration of the Commission's policy prohibiting the use of shared transmitters by Part 22 licensees, the *Stay Order* IS LIFTED, and the policy is reversed.

9. The petitions for reconsideration of *the Part 22 Rewrite Order* are in all other respects dismissed or denied.

10. Pursuant to sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i),154(j), and section 1.2 of the Commission's

rules, 47 CFR 1.2, the Petition for Declaratory Ruling filed by Graceba Total Communications, Inc. IS DISMISSED.

11. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

12. For additional information concerning this matter, contact Don Johnson (202–418–7240), Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10843 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[WT Docket No. 96–148 and GN Docket No. 96–113; FCC 00–88]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees and the Implementation of the Communications Act—Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petitions.

SUMMARY: This document dismisses the petitions filed by the National Telephone Cooperative Association (NTCA) and Omnipoint Corporation (Omnipoint) requesting reconsideration of a previous Commission decision that: eliminated the restriction permitting partitioning only to rural telephone companies; prohibited entrepreneur block licensees from swapping spectrum blocks with non-entrepreneur block licensees in the same geographic market; and required the filing of the associated contract for sale and related documents together with any partitioning and/or disaggregation application that is filed within the first three years following issuance of a new PCS license through competitive bidding. This document also dismisses as moot the Rural Telecommunications Group's Motion for Stay to stay the effective date of the new rules adopted in the same Commission decision. This action by the Commission eliminates market entry barriers, thereby increasing competition in the PCS marketplace while expeditiously speeding service to the public.

ADDRESSES: Comments should be filed with the Office of the Secretary, Federal Communications Commisison, TW B204, 445 12th Street, SW Washington, DC 20554. Comments also should be provided to Steve Weingarten, Chief, Commercial Wireless Division, Room 4C–224, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Wireless Telecommunications Bureau at (202) 418–0786.

SUPPLEMENTARY INFORMATION: The final rule published at 62 FR 653 (January 6, 1997) previously adopted by the Commission, and this document is in keeping with Congress' goal of increasing competition in that it allows more competitors to enter the marketplace and deploy services to the public quickly and efficiently, as well as, provide opportunities for rural telcos and other small businesses to provide broadband PCS to the public without increasing the administrative burden to the Commission. This document was released on April 13, 2000, and is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW Washington, DC 20036/(202) 857–3800. The Memorandum Opinion and Order is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–10353 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–602, MM Docket No. 95–83, RM–8558]

Radio Broadcasting Services; Littlefield, Wolfforth and Tahoka, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document grants the Petition for Partial Reconsideration filed by 21st Century Radio Ventures, Inc. by substituting Channel 278A for Channel 237A at Tahoka. *See* 62 FR 14092 (March 25, 1997). In the *Report and Order,* the Commission took no action in Littlefield, Wolfforth or on the issue of the deletion or substitution of Channel 237A at Tahoka. Channel 278A can be allotted to Tahoka in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 278A at Tahoka are North Latitude 33–11–34 and West Longitude 101–44–44. With this action this proceeding is terminated.

EFFECTIVE DATE: May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 95–83, adopted March 8, 2000 and released March 20, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, SW. Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by removing Channel 237A and adding Channel 278A to Tahoka.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–10755 Filed 5–1–00; 8:45 am]

BILLING CODE 6712 –01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–835; MM Docket No. 99–302; RM–9727]

Radio Broadcasting Services; Monahans and Gardendale, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 271C from Monahans, Texas, to Gardendale, Texas, and modifies the license for Station KFZX (formerly KCDQ) to specify operation on Channel 271C at Gardendale in response to a petition filed by Capstar Royalty II Corporation *See* 64 FR 57835, October 27, 1999. The coordinates for Channel 271C at Gardendale are 31–57–55 and 102–46–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–302, adopted April 5, 2000, and released April 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 271C at Monahans and adding Gardendale, Channel 271C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–10759 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–830; MM Docket No. 99–236; RM–9644]

Radio Broadcasting Services; Madisonville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 267A to Madisonville, Texas, in response to a petition filed by Leon Hunt d/b/a Hunt Broadcasting. *See* 64 FR 36322, July 6, 1999. The coordinates for Channel 267A at Madisonville are 31–01–20 NL and 95–55–00 WL. There is a site restriction 8.09 kilometers (5.0 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 267A at Madisonville will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–236, adopted April 5, 2000, and released April 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 267A at Madisonville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–10758 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–832 ; MM Docket No. 99–340; RM–9778]

Radio Broadcasting Services; Seymour, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222C2 to Seymour, Texas, in response to a petition filed by Seymour Radio Broadcasting Company. *See* 64 FR 68662, December 8, 1999. The coordinates for Channel 222C2 at Seymour are 33–34–49 NL and 99–18–01 WL. There is a site restriction 4 kilometers (2.5 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 222C2 at Seymour will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–340, adopted April 5, 2000, and released April 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 222C2 at Seymour.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–10757 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 85
Tuesday, May 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–15]

Proposed Modification of Class D Airspace; Chicago, Aurora Municipal Airport, IL; and Modification of Class E Airspace; Chicago, Aurora Municipal Airport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Chicago, Aurora Municipal Airport, IL, and modify Class E airspace at Chicago, Aurora Municipal Airport, IL. A VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and a VOR SIAP to Rwy 33, have been developed for Aurora Municipal Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Aurora Municipal Airport.

DATES: Comments must be received on or before June 16, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Chicago, Aurora Municipal Airport, IL, by increasing the radius of the existing Class D airspace and Class E airspace for Aurora Municipal Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as extensions to a Class D airspace area are published in paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IL D Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41° 46′ 19″N., long. 88° 29′ 32″W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within an 4.2-mile radius of the Aurora Municipal Airport. This Class D airspace area is affective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

AGL E4 Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41° 46′ 19″N., long. 88° 28′ 32″W.)
DuPage VOR/DME
(Lat. 41° 53′ 25″N., long. 88° 21′ 01″W.)

That airspace extending upward from the surface within 1.3 miles each side of the DuPage VOR/DME 217° radial extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.6 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 17, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10913 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–16]

Proposed Modification of Class D Airspace; Gary, IN; and Modification of Class E Airspace; Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class D airspace at Gary, IN, and modify Class E airspace at Gary, IN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 20, and a helicopter Instrument Landing System (Copter ILS) SIAP to Rwy 30, have been developed for Gary Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D and Class E airspace for Gary Regional Airport.

DATES: Comments must be received on or before June 16, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–16, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and Class E airspace at Gary, IN, by increasing the radius of the existing Class D airspace and Class E airspace for Gary Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by

reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Gary, IN [Revised]

Gary Regional Airport, SD
(Lat. 41°36′59″N., long. 87°24′46″W.)
That airspace extending upward from the surface to and including 3,100 feet MSL within an 4.2-mile radius of the Gary Regional Airport. This Class D airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Gary, IN [Revised]

Gary Regional Airport, IN
(Lat. 41°36′59″N., long. 87°24′46″W.)
That airspace extending upward from 700 feet above the surface within 6.7-mile radius of the Gary Regional Airport, excluding the airspace within the Chicago Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 17, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10915 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–14]

Proposed Modification of Class E Airspace; Harbor Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E Airspace at Harbor Springs, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 10, and an RNAV SIAP to Rwy 28, have been developed for Harbor Springs Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace extending upward from 1,200 feet for Harbor Springs Airport.

DATES: Comments must be received on or before June 16, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AGL–14'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Harbor Springs, MI, for Harbor Springs Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Harbor Springs, MI [Revised]

Harbor Springs Airport, MI
(Lat. 45°25′32″N., long. 84°54′48″W.)
Pellston VORTAC
(Lat. 45°37′50″N., long. 84°39′51″W.)
Sault Ste Marie, Chippewa County International Airport, MI
(Lat. 46°14′03″N., long. 84°28′21″W.)
That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport and the airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 46°03′00″N, on the northeast by the 22-mile radius of the Chippewa County International Airport, on the southeast by the 16.6-mile radius of the Pellston VORTAC, on the south by latitude 45°45′00″N, and on the west by longitude 85°56′00″W, excluding that airspace within V78, and the Manistique, MI, Class E airspace area.

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Issued in Des Plaines, Illinois on April 17, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–10914 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–007]

RIN 2115–AA97

Regulated Navigation Area, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to decrease the safety zone ahead of loaded Liquefied Natural Gas tank vessels while the vessels transit Boston North Channel and Boston Harbor from two (2) miles ahead to one (1) mile ahead of the vessel. This action is necessary to bring the current safety zone into more realistic boundaries due to the configuration of the harbor. This decrease of one mile ahead of the vessel will have no effect on the safety of the transits of these vessels, and will serve to facilitate commerce in Boston Harbor.

DATES: Comments and related material must reach the Coast Guard on or before July 3, 2000.

ADDRESSES: Comments should be made to: Commanding Officer, Marine Safety Office Boston, Attn: LT Mike Antonellis, 455 Commercial Street, Boston, Massachusetts 02109. The Inspections and Investigations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Mike Antonellis, Marine Safety Office, Boston, Massachusetts 02109; (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Each person submitting comments should include their name and address, identify the docket number for this rulemaking (CGD1–00–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and related material should be submitted on 8½″×11″ paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. All comments and material submitted during the comment period will be considered by the Coast Guard and may change this proposal.

Public Meeting

The Coast Guard has no plans to hold a public meeting. Persons may request a public meeting by writing to Marine Safety Office, Boston, MA at the address under **ADDRESSES** explaining why one would be beneficial. If the Coast Guard determines that oral presentations would aid this rulemaking, it will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The purpose of this regulation is to allow for more realistic management of the current safety zone. The current safety zone is for two (2) miles ahead of Liquefied Natural Gas (LNG) tank vessels when transiting Boston Harbor. During these transits, two (2) miles ahead of the vessel is not always visible from the vessel, due to the physical configuration of the harbor.

LNG tank vessels transit Boston Harbor approximately once a week. Currently, a safety zone is in place two (2) miles ahead of a loaded LNG vessel and one (1) mile astern of the vessel while transiting Boston Harbor. The current two (2) mile ahead distance extends beyond the harbor for the majority of the transit. Reducing this distance to one (1) mile will allow a more realistic management of the safety zone by eliminating areas beyond the harbor and main ship channel from the safety zone.

Discussion of Proposed Rule

The existing rule will be amended to reduce the safety zone from two (2) miles ahead to one (1) mile ahead of all Liquefied Natural Gas tank vessels transiting Boston Harbor. The purpose of this regulation is to allow for more realistic management of the current safety zone due to the physical configuration of the harbor.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

As this proposed rule will decrease the boundaries of an already existing safety zone, the economic impact should be minimal, as fewer entities will be affected by the new safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor during Liquefied Natural Gas Carrier transits.

This reduction of the safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the majority of the harbor, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, maritime advisories would be made to notify all users of the harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Mike Antonellis, Marine Safety Office, Boston, MA 02109; (617) 223–3000.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposed rule under E.O. 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A categorical exclusion is not required for actions that reduce the size of a safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.110 [Amended]

2. In § 165.110(a)(1), remove the words ''two miles'' and add, in its place, the words ''one mile''.

Dated: April 3, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–10848 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OK–19–1–7453b; FRL–6582–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We propose to approve the section 111(d) Plan submitted by the Oklahoma Department of Environmental Quality on November 17, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (MWI). The EG require States to develop plans to reduce toxic air emissions from all MWIs. In the final rules section of this **Federal Register**, we are approving the State Plan as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final notice of this action located elsewhere in today's **Federal Register** for a detailed description of the Oklahoma State Plan.

DATES: Comments must be received by June 1, 2000.

ADDRESSES: You should address comments on this action to Lt. Commander Mick Cote, EPA Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 6 offices, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, and at the Oklahoma Department of Environmental Quality offices, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Lt. Commander Mick Cote at (214) 665–7219.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2000.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 00–10762 Filed 5–1–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AB04

Medicare and State Health Care Programs: Fraud and Abuse; Civil Money Penalty Safe Harbor To Protect Payment of Medicare Supplemental Insurance and Medigap Premiums for ESRD Beneficiaries

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with section 5201 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, this proposed rule would set forth in the OIG's civil money penalty provisions in 42 CFR part 1003 a new safe harbor for unlawful inducements to beneficiaries to provide protection for independent dialysis facilities that pay, in whole or in part, premiums for Supplementary Medical Insurance (Medicare Part B) or Medicare Supplemental Health Insurance policies (Medigap) for financially needy Medicare beneficiaries with end-stage renal disease (ESRD). This safe harbor would specifically establish various standards and guidelines that, if met, would result in the particular arrangement being protected from civil sanctions under section 1128A(a)(5) of the Social Security Act.

DATES: To assure consideration, public comments on this proposed rule must be delivered to the address provided below by no later than 4:30 p.m. on July 3, 2000.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–699–P, Room 5546, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to code OIG–699–P.

FOR FURTHER INFORMATION CONTACT: Julie Kass (202) 205–9501 or Joel Schaer (202) 619–0089, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1128A(a)(5) of the Social Security Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, amended the Social Security Act (Act) to prohibit providers from offering patients any inducement to order or receive items or services from a particular provider, practitioner or supplier. Specifically, section 231(h) of HIPAA established a new provision—section 1128A(a)(5) of the Act—to provide for the imposition of a civil money penalty (CMP) against any person who:

> Offers or transfers remuneration to any individual eligible for benefits under [Medicare or Medicaid] that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under [Medicare or Medicaid].

Section 231(h) of HIPAA also created a new section 1128A(i)(6) of the Act to define the term ''remuneration'' for purposes of the new CMP. The section defines ''remuneration,'' in relevant part, as ''transfers of items or services for free or for other than fair market value.'' Remuneration does not include certain enumerated practices, including waivers of coinsurance and deductible amounts, if the waiver: (1) Is not advertised; (2) is not routinely offered; and (3) is made following an individualized good faith assessment of financial need or is made after reasonable efforts to collect the coinsurance or deductible amounts have failed. There is no exception for the payment of Medicare Part B or Medigap insurance premiums on behalf of beneficiaries even when the same criteria are met.

On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (OCESAA), Public Law 105–277. Section 5201 of OCESAA specifically authorized the Secretary to issue regulations establishing ''safe harbors'' under section 1128A(a)(5) of the Act for payment practices that would otherwise run afoul of the statute. (In addition to this provision, the Secretary is vested with the authority to issue advisory opinions providing legal and regulatory guidance to providers under this section.) With respect to the payment of Medicare Part B and Medigap premiums for ESRD patients, Congress required any exception to be established through a rulemaking process and limited it to the two-year period beginning on the date the final rule is promulgated. In addition, if the Secretary promulgates a safe harbor for ESRD premiums, Congress required the Comptroller General of the United States to conduct a study of any disproportionate impact on specific issuers of Medigap insurance policies due to adverse selection in enrolling Medicare ESRD beneficiaries. The Comptroller report would include a recommendation as to whether the time limit on the safe harbor should be extended.

B. End-Stage Renal Disease and Medicare's Dialysis Benefit

End-stage renal disease is a chronic disease that requires regular renal replacement therapy, such as dialysis treatments, as well as regular monitoring of laboratory values, diet and medication. In addition to irreversible renal failure, ESRD patients commonly suffer from certain co-morbid conditions, such as diabetes, anemia, hypertension and congestive heart failure. Without ongoing dialysis treatment or a transplant, ESRD is a fatal condition. End-stage renal disease affects a disproportionate share of minority populations that also have a higher than average incidence of poverty.

In 1978, Congress amended title 11 of the Act to create a special Medicare benefit under Public Law 95–292 for eligible individuals with ESRD (or dependents of those who are eligible). In accordance with section 226A of the Act, eligible persons are entitled to benefits under Medicare Part A and are eligible to enroll under Part B of the Medicare program. End-stage renal disease benefits include all Part A and Part B items and services covered under the Medicare program, and ESRD beneficiaries are subject to all the regular deductible, premium and coinsurance provisions of Part A and Part B.

Medicare pays a composite rate to dialysis facilities for each dialysis treatment. The composite rate includes: (1) Medically necessary dialysis equipment, (2) home dialysis support services, (3) all necessary dialysis supplies, (4) routine ESRD-related laboratory tests and (5) all dialysis services furnished by the dialysis facility's staff. Certain other ESRD services, such as non-routine laboratory tests, may be paid to the facility outside of the composite rate.

Medicare Part B payments generally cover 80 percent of the composite rate. End-stage renal disease patients are responsible for the remaining 20 percent coinsurance and any deductibles. Typically, ESRD patients are responsible for approximately $5,000 per year in coinsurance for their dialysis treatments alone. This amount does not include the cost of coinsurance associated with hospital and physician services. In addition, ESRD patients must pay for a number of related drugs that are not covered by Medicare. On average the cost of Medigap insurance can range from approximately $1,200 to $3,600, depending on what the policy covers.

C. Effects of Section 1128A(a)(5) on the ESRD Population

After the enactment of HIPAA, representatives of a number of ESRD providers informed the OIG that many ESRD providers had been paying for Medicare Part B premiums and Medigap policies for financially needy patients who could not afford to purchase such insurance. Under the new statutory CMP provision, the OIG concluded that such premium subsidies could be unlawful in many circumstances, and dialysis providers subsequently suspended the purchase of Medigap policies and payment of Medicare Part B premiums for their patients. However, some providers entered into arrangements with nonprofit organizations that agreed to pay premiums on behalf of needy ESRD patients.

To date, in accordance with statutory authority under section 1128D(b) of the Act, the OIG has issued three advisory opinions approving the payment by unrelated entities of insurance premiums for financially needy ESRD patients. In the first opinion, the American Kidney Fund (AKF)—a *bona fide* section 501(c)(3) charitable and educational organization—and a number of dialysis providers established an arrangement whereby providers make contributions to the AKF which, in turn, independently screens candidates for financial need and then pays Medicare Part B and Medigap premiums on behalf of qualifying patients [1]. We have indicated that this system does not violate the CMP provision because the dialysis providers are not making payments to patients or on their patients' behalf, and there is no ''pass through'' of specific payments to specific patients. The two other advisory opinion requests, which were also approved, involved a State-funded program and a Statewide program modeled on the AKF arrangement. [2]

Providers claim that these new premium payment programs are unwieldy, create delays and uncertainty for beneficiaries, and create unnecessary paperwork and bureaucracy. In addition, the provider community has indicated that the risks to the Medicare and Medicaid programs and to the patients do not appear to differ significantly from when dialysis providers paid the premiums directly.

II. Provisions of the Proposed Rule

We are proposing an exception to section 1128A(a)(5) of the Act for independent dialysis facilities, as defined in 42 CFR 413.174, that pay for Medicare Part B and Medigap premiums for financially needy ESRD patients when:

- The payment is not advertised;
- The dialysis facility does not routinely make payments for such policies; and
- The dialysis facility makes a good faith determination that the individual is financially needy.

Protection would not extend to the payment of Medicare Part B or Medigap premiums on behalf of any other beneficiaries (*i.e.,* beneficiaries without ESRD) or by any other provider, conduct which section 1128A(a)(5) of the Act specifically prohibits.

The OIG is concerned that by offering to provide financial assistance to ESRD patients as part of an advertisement or solicitation, providers might influence a beneficiary's choice of provider. Therefore, to fit within the proposed exception, independent dialysis facilities would have to refrain from advertising any offer to make such payments. Without advertising the payment of premiums, the likelihood increases that ESRD patients will have selected their dialysis provider prior to receiving the offer of payment for Medicare Part B or Medigap premiums.

Moreover, we believe that it is inappropriate for health care providers

[1] See OIG Advisory Opinion 97–1.

[2] See OIG Advisory Opinions 97–2 and 98–17.

to pay Medicare Part B or Medigap premiums *routinely* on behalf of ESRD beneficiaries, rather than to make payment decisions on a case-by-case basis. In this proposed rule, we are not specifying any particular method of determining financial need, since what may constitute ''financial need'' will vary depending on various factors and circumstances. What is important is that providers make determinations of financial need on an individualized, case-by-case basis in accordance with a reasonable set of income guidelines uniformly applied in all cases. The guidelines should be based on objective criteria and appropriate for the applicable locality. We believe that it is not appropriate to apply inflated income guidelines that result in waivers of copayments for persons not in genuine financial need.

Limited applicability. Despite the similarity of the criteria for the proposed payment of premium safe harbor to the statutory criteria for the waiver of copayment exception, we wish to emphasize that the proposed regulatory protection would apply *only* to payments by independent dialysis facilities that have no hospital, physician or other provider or supplier ownership. While waivers of copayments are themselves suspect, the payment of insurance premiums by a provider or supplier who is paid on a fee-for-service basis significantly increases the incentive for overutilization and other abuse.

In the case of dialysis, providers are paid a prospectively fixed payment for the dialysis services provided to each patient. Thus, there is less incentive to overutilize or provide unnecessary services, notwithstanding the additional insurance coverage. By contrast, we believe that a provider or supplier that is treating a patient with a chronic condition on a fee-for-service basis has a strong incentive to recoup its outlay for the premium by providing additional services. In the case of a hospital-based dialysis facility or independent dialysis facility in which a hospital, physician or other provider or supplier has an ownership interest, we are concerned that these providers or suppliers would have the same incentive as other providers or suppliers paid on a fee-for-service basis, especially given the substantial amount of health care services required by ESRD patients for co-morbid conditions. Accordingly, we are excluding from this proposed exception hospital-based dialysis facilities and independent dialysis facilities, owned in whole or in part by a hospital, physician or other provider or supplier paid on a fee-for-service basis, and seek specific comments on this exclusion from the exception. We are also concerned with the potential impact of adverse selection on the Medigap insurance market, and seek specific comments concerning the potential effects this provision may have on Medigap plans.

III. Regulatory Impact Statement

Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that the rulemaking does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, health and equity effects. The Unfunded Mandates Reform Act (Public Law 104–4) requires that agencies prepare an assessment of anticipated costs and benefits on any rulemaking that may result in an expenditure by State, local or tribal government, or by the private sector of $100 million or more in any given year. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. We believe that this proposed rule would have no significant economic impact. The proposed safe harbor provision being set forth is designed to permit individuals and entities to freely engage in business practice and arrangements that encourage competition, choice and economy. In doing so, the rule would impose no requirements on any party. Independent dialysis facilities may voluntarily seek to comply with this proposed provision so that their business practice is not subject to enforcement actions under the civil money penalty statute. Any aggregate economic effect of this safe harbor rule would be minimal, allowing independent dialysis facilities to do directly what some dialysis facilities are already allowed to do indirectly through the AKF (in accordance with OIG Advisory Opinion 97–1). As such, we believe that the aggregate economic impact of this proposed safe harbor rule would be minimal and would have no effect on the economy or on Federal or State expenditures.

Unfunded Mandates Reform Act

Additionally, in accordance with the Unfunded Mandates Reform Act of 1995, since there are no significant costs associated with this proposed safe harbor guideline that would impose any mandates on State, local or tribal governments, or the private sector that would result in an expenditure of $100 million or more in any given year, we have determined that a full analysis under the Act is not necessary.

Regulatory Flexibility Act

In accordance with Regulatory Flexibility Act (RFA) of 1980, and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, we have determined that this proposed rule would have no significant economic effect on a substantial number of small entities. While this proposed safe harbor may have an impact on some small entities, we believe that the aggregate economic impact of this rulemaking should be minimal, since it is the nature of a violation and not the size of the entity that determines whether the OIG will pursue a sanction action. Since this proposed safe harbor would offer individuals and entities greater flexibility in their business arrangements, we believe that the proposed regulations should not have a significant economic impact on a number of small business providers, and that a regulatory flexibility analysis is not required for this rulemaking.

IV. Public Inspection of Comments

Comments will be available for public inspection beginning on May 16, 2000 in Room 5518 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089. Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to them individually. However, we will consider all timely and appropriate comments when developing the final rule.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health

professions, Maternal and child health, Medicare, Medicaid, Penalties.

Accordingly, 42 CFR part 1003 would be amended as set forth below:

PART 1003—[AMENDED]

1. The authority citation for part 1003 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn, 1395ss(d), 1396b(m), 11131(c), 11137(b)(2).

2. Section 1003.101 would be amended by:

a. Republishing the introductory text; and

b. Amending the definition of *renumeration* by revising the introductory text and paragraphs (3) and (4), and by adding a new paragraph (5).

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Remuneration, as set forth in § 1003.102(b)(12) of this part, is consistent with the definition contained in section 1128A(i)(6) of the Act, and includes the waiver of coinsurance and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. The term ''remuneration'' does not include—

* * * * *

(3) Differentials in coinsurance and deductible amounts as part of a benefit plan design (as long as the differentials have been disclosed in writing to all beneficiaries, third party payers and providers), to whom claims are presented;

(4) Incentives given to individuals to promote the delivery of preventive care services where the delivery of such services is not tied (directly or indirectly) to the provision of other services reimbursed in whole or in part by Medicare or an applicable State health care program. Such incentives may include the provision of preventive care, but may not include—

(i) Cash or instruments convertible to cash; or

(ii) An incentive the value of which is disproportionately large in relationship to the value of the preventive care service (*i.e.,* either the value of the service itself or the future health care costs reasonably expected to be avoided as a result of the preventive care); or

(5) Any payments for Supplementary Medical Insurance (Medicare Part B) or Medicare Supplemental Health Insurance (Medigap) premium amounts (or any parts thereof) by an independent dialysis facility, as defined in § 413.174 of this title, that is not owned in whole or in part by a hospital, physician, or other provider or supplier paid on a fee-for-service basis, as long as all of the following three standards are met —

(i) The payment is not offered as part of any advertisement or solicitation;

(ii) The facility does not routinely make payments for such premiums; and

(iii) The facility makes the payment for such premiums only after determining in good faith that the individual on behalf of whom such payment is made is in financial need.

* * * * *

Dated: August 9, 1999.

June Gibbs Brown,

Inspector General.

Approved: September 2, 1999.

Editorial Note: This document was received at the Office of the Federal Register on April 25, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–10695 Filed 5–1–00; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–831; MM Docket No. 99–282; RM–9710]

Radio Broadcasting Services; Littlefield, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 265C to Littlefield, Arizona, as a first local aural transmission service, for failure to establish that locality is a *bona fide* community for allotment purposes. See 64 FR 51286, September 22, 1999. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–282, adopted April 5, 2000, and released April 14, 2000 . The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–10756 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 85

Tuesday, May 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the following Federally owned inventions are available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to the University of Hawaii of Honolulu, Hawaii, and the Cornell Research Foundation of Ithaca, New York, an exclusive license to the following papaya varieties.

''UH Rainbow,'' as disclosed in U.S. Plant Patent Application Serial No. 09/301,389, filed on April 28, 1999; and

''UH Sunup,'' as disclosed in U.S. Plant Patent Application Serial No. 09/300,960, filed on April 28, 1999; and

''Laie Gold,'' as disclosed in U.S. Plant Patent Application Serial No. 09/446,769, filed on November 22, 1999; and

''Poamoho Gold,'' as disclosed in U.S. Plant Patent Application Serial No. 09/490,039, filed on January 24, 2000.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as the University of Hawaii and the Cornell Research Foundation have submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 00–10865 Filed 5–1–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission's final meeting.

SUMMARY: The National Drought Policy Commission (Commission) shall conduct a thorough study and submit a report to the President and Congress on national drought policy. This notice announces a meeting to be held on May 16, 2000. The Commission will submit the final report and discuss its final recommendations and future activities. The meeting is open to the public.

DATES: The Commission will conduct a meeting on May 16, 2000, at 1:00 p.m. (EDT)

Persons with disabilities who require accommodations to attend or participate in this meeting should contact Leona Dittus, on 202–720–3168, Federal Relay Service at 1–800–877–8339, or Internet: leona.dittus@usda.gov, by COB May 9, 2000.

ADDRESSES: The meeting will be held in the Williamsburg Room, Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW, Washington, DC. Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; Internet: leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will: (a) Better integrate Federal laws and programs with ongoing State, local, and tribal programs, (b) improve public awareness of the need for drought mitigation, prevention, and response and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency.

Signed at Washington, DC, on April 28, 2000.

Robert D. Springer,

Acting Administrator, Farm Service Agency.

[FR Doc. 00–10985 Filed 4–28–00; 11:57 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; National Survey on Recreation and the Environment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request an extension of a currently approved, multi-agency-sponsored information collection. This collection is necessary to ensure that the Forest Service and other land managing agencies meet the recreational needs of the public, understand the public's attitudes and preferences for management of public lands and the environment, and meet Congressionally mandated reporting requirements for the Renewable Resources Planning Act and the Government Performance and Results Act. Information will be

collected from adults in the United States.

DATES: Comments must be received in writing on or before July 3, 2000.

ADDRESSES: All comments should be addressed to H. Ken Cordell, Southern Research Station, Forest Service, USDA, 320 Green Street, Athens, GA 30602–2044.

Comments also may be submitted via facsimile to (706) 559–4266 or by e-mail to kcordell@fs.fed.us.

The public may inspect comments received at the offices of the Southern Research Station, Research Work Unit SRS–4901, Forest Service, USDA, 320 Green Street, Athens, Georgia.

FOR FURTHER INFORMATION CONTACT: H. Ken Cordell, Southern Research Station, at (706) 559–4263.

SUPPLEMENTARY INFORMATION:

Background

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended, directs the Secretary of Agriculture to periodically assess the status of National Forests and other forests and rangeland resources. Similar legislative assessment mandates form the basis for each of the other Federal agencies that sponsor the National Survey on Recreation and the Environment. These agencies include the National Oceanic and Atmospheric Administration, the Economic Research Service, the Environmental Protection Agency, the National Park Service, and the Bureau of Land Management. The RPA Assessment Update must be completed by 2002.

Each Federal agency needs to keep abreast of public outdoor recreational trends and preferences. The survey assesses the demands the public places on Federal and other managed forest, rangeland and wilderness resources for recreational purposes and the perceptions the public has of the way agencies manage for meeting these demands. The collected information enables the agencies to be responsive to the trends and preferences of the public while achieving the agencies' missions through effective policy, planning, and management of Federal lands and other forests and wilderness resources.

The National Survey on Recreation and the Environment will be used to collect the data for the assessment update.

The first National Recreation Survey (NRS) was conducted in 1960 by the Outdoor Recreation Resources Review Commission and has assumed the role of being the United States' baseline survey for outdoor recreation and related public land interests. The NRS has served as the official source of recreation data for the population in the United States.

The Forest Service assumed the principle investigative role for the Survey in 1986 and, in 1994, conducted the sixth in this continuing national series. As the lead agency, Forest Service personnel led the conceptualization, design, and execution of the 1994–95 National Survey on Recreation and the Environment. The Forest Service is coordinating NSRE 2000, which began in 1999. It is the seventh in this series of Federally-sponsored recreational surveys.

The NRS survey series has served not only Federal land managing agencies, but also educational institutions, industry, others in the private sector, State agencies, and other levels of government.

Description of Information Collection

The following describes the information collection to be extended:

Title: National Survey on Recreation and the Environment 2000.

OMB Number: 0596–0127.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension of a previously approved information collection.

Abstract: The collected information will be used to measure the recreational demands the public makes on Federally managed forest and wilderness resources and other public lands at all levels of government. The Forest Service will use the collected information in developing the 2000 and 2003 Renewable Resources Planning Act Assessments and the 2000 and 2003 Government Performance and Results Act Strategic Plans.

To enable analysis of trends, many of the interviewing protocols used in earlier surveys have been replicated. Interviews are being conducted by telephone with telephone numbers selected randomly. Persons who answer the phone are interviewed by University of Tennessee trained interview personnel. Bilingual interviewers are available to overcome language barriers.

Respondents are all age, ethnic, regional, gender, and household strata making up the United States' population. Data is collected from a random sample of adults residing in the United States and the District of Columbia. Sampling is by means of Random Digit Dialing (RDD), resulting in natural stratification of the sample by state, county, and area code. RDD samples provide an equal probability of reaching all households in the nation with telephone access (i.e., a unique telephone number that rings in that household only), whether or not that phone number is listed. University of Tennessee interviewers collect the data under an agreement with the Southern Research Station of the Forest Service.

Questions address the public's perception of recreational site accessibility for disabled persons; the public's perception of how Federal forests, forests on other public lands, and wilderness resources are managed; the public's perception of how well the Federal government delivers the preferred recreational services; and the demographics of the respondents.

Data gathered in this information collection is not available from other sources.

Estimate of Annual Burden: 18 minutes.

Type of Respondents: Consenting adults with access to a telephone.

Estimated Annual Number of Respondents: 20,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,000 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection will meet the stated purposes and is necessary to the performance of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the public burden and validity of the methods and assumptions used; (c) ways that might improve the quality, utility, and clarity of information to be collected; and (d) ways to minimize the burden on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: April 25, 2000.

Randle D. Phillips,

Deputy Chief, Programs and Legislation.

[FR Doc. 00–10837 Filed 5–1–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council; Subcommittee on Encryption; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on May 16, 2000, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The meeting will begin in open session at 9:30 a.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:30 a.m.–12:00 p.m.

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

Closed Session: 1:00 p.m.–2:30 p.m.

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSENC members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, D.C. 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 25, 1999, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and coying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: April 25, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 00–10901 Filed 5–1–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On April 10, 2000, Cemex, S.A. de C.V. (''CEMEX'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was filed by Cementos de Chihuahua S.A. de C.V. (''CDC'') on April 11, 2000. Panel review was requested of the final antidumping duty administrative review determination made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (65 FR 13943) on March 15, 2000. The NAFTA Secretariat has assigned Case Number USA–MEX–00–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 10, 2000, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 10, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 25, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 12, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–10907 Filed 5–1–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Corporate Session With Nigerian Officials: Event Announcement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Nigeria business event opportunity.

SUMMARY: The U.S. Department of Commerce invites U.S. companies to participate in a corporate session with Nigerian Government officials as part of the U.S.-Nigeria Joint Economic Partnership Commission on June 14, 2000 in Abuja, Nigeria. The corporate session is composed of a working breakfast, sector-specific meetings, and a keynote luncheon.

DATES: Requests must be received no later than May 15, 2000.

ADDRESSES: In order to receive full consideration for this event, send a 1–2 page summary of your company's business experience in Nigeria and/or your current concerns about doing business in Nigeria to Douglas Wallace, USDOC Nigeria Desk Officer, by mail to Room 2037, U.S. Department of Commerce, Washington, D.C. 20230, or by fax at (202) 482–5198.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Wallace, USDOC Nigeria Desk Officer, Office of Africa, Room 2037, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5149.

Notice of Business Event Opportunity

U.S. and Nigerian Government officials will hold the second round of the U.S.-Nigeria Joint Economic Partnership Commission (JEPC) in Abuja on June 12–14, 2000. The purpose of the JEPC is to open channels of discussion between high-ranking USG and GON officials on issues affecting the economic and commercial relationship between the two countries.

The U.S. Department of Commerce is organizing a Corporate Session on June 14 to focus on U.S. private sector concerns about the Nigerian business environment. The Corporate Session will give U.S. companies the opportunity to present to Nigerian decision makers the obstacles they face in doing business in Nigeria and suggest possible trade and regulatory changes which would help create a more attractive environment for U.S. trade and investment. The Corporate Session will also allow the Nigerian officials to announce specific opportunities related to priority sectors in Nigeria.

The following is an outline of the Corporate Session to date:

June 14, 2000

9:00–10:00 a.m.—Working Breakfast

The Corporate Session will begin with a one-hour working breakfast involving USG and GON officials and U.S. and Nigerian private sector representatives. The leader of the Nigerian side, Chief Economic Advisor to the President Philip Asiodu, will welcome the participants, summarize the Nigerian economic situation and business environment, and outline the GON's expected policy changes in the near term. Asiodu will then invite the USG leader, State Under Secretary Alan Larson, to summarize the developments and issues raised during the JEPC discussions for the private sector participants.

10 a.m.–12:30 p.m.—Sector-Specific Meetings

Upon conclusion of the working breakfast, participants will separate into four sector-specific meetings: (1) agribusiness, (2) telecom, (3) transportation, and (4) energy/environmental technologies. Each sub-group will be co-led by a USG official who will introduce the GON leader and act as discussion moderator. After brief remarks from the Nigerian side, U.S. and Nigerian public and private sector participants will engage in an open, sector-specific dialogue.

12:30–2:00 p.m.—Lunch

The Corporate Session Luncheon will feature a keynote speech and further questions/answers.

Edward Casselle,

Deputy Assistant Secretary for Africa.

[FR Doc. 00–10900 Filed 5–1–00; 8:45 am]

BILLING CODE 3510–DA–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

April 26, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing a guaranteed access level.

EFFECTIVE DATE: May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover and the recrediting of unused carryforward.

Upon the request of the Government of Costa Rica, the U.S. Government has agreed to increase the current Guaranteed Access Level for textile products in Category 447.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 26, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 2, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,175,116 dozen.
342/642	409,129 dozen.
347/348	2,314,665 dozen.
443	237,553 numbers.
447	14,125 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

Also effective on , you are directed to increase the Guaranteed Access Level for Category 447 to 14,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–10892 Filed 5–1–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 3, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these aspects to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 26, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Projects with Industry.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 350—Burden Hours: 14,000.

Abstract: The Rehabilitation Services Administration (RSA) requests OMB approval to extend currently approved data collection form for use through December 31, 2000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov.,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–10872 Filed 5–1–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of waivers granted by the U.S. Secretary of Education under the waiver authority in Title XIV of the Elementary and Secondary Education Act and of deadlines for the submission of future requests

SUMMARY: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Improving America's Schools Act (Pub. L. 103–382), permits the Secretary of Education to grant waivers of certain Federal program requirements in order to further effective innovation and improvements in teaching and learning in accordance with specific local needs. As of December 31, 1999, the U.S. Department of Education had approved 471 requests for waivers. This notice identifies the 104 waivers approved by the Department of Education from January 1, 1999 through December 31,1999 under the waiver authority in section 14401 of the ESEA.

Waivers Approved Under the General Waiver Authority in Section 14401 of the ESEA

(1) Applicant: California Department of Education, Sacramento, CA.
Requirement Waived: Section 307(c)(2)(C) of the Department of Education Appropriations Act of 1999, as enacted by section 101(f) of Division A of P.L. 105–277 (hereinafter referred to as the Class-Size legislation).
Duration of Waiver: Three years.
Date Granted: April 5, 1999.

(2) Applicant: Utah State Office of Education, Salt Lake City, UT.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: April 15, 1999.

(3) *Applicant:* California Department of Education, Sacramento, CA.
Requirement Waived: Section 14201(a) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 13, 1999.

(4) *Applicant:* Pasco County School District on behalf of Schrader Elementary School, Hudson Elementary School, M.P. Locke Elementary School, and Anclote Elementary School, Land O' Lakes, FL.
Requirement Waived: Section 1113(a)(3)(B) of the ESEA.
Duration of Waiver: Two years.
Date Granted: May 19, 1999.

(5) *Applicant:* Lincoln County School District on behalf of Love Elementary School, Lincolnton, NC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: May 19, 1999.

(6) *Applicant:* South Carolina Department of Education, Columbia, SC.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 1, 1999.

(7) Applicant: School District of Philadelphia, Philadelphia, PA.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 2, 1999.

(8) Applicant: Minnesota Department of Education, Roseville, MN.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 2, 1999.

(9) Applicant: Missouri Department of Elementary and Secondary Education, Jefferson City, MI.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 2, 1999.

(10) Applicant: North Dakota Department of Public Instruction, Bismarck, ND.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 2, 1999.
(11) Applicant: Pennsylvania Department of Education on behalf of Fox Chapel Area School District, Pittsburgh, PA.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 3, 1999.
(12) Applicant: Fayette County Schools on behalf of Deep Springs Elementary School and Julia R. Ewan Elementary School, Lexington, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 7, 1999.
(13) Applicant: Seminole County Public Schools on behalf of Altamonte Elementary School, Longwood Elementary School, Forest City Elementary School, Highlands Elementary School, and Wilson Elementary School, Sanford, FL.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 7, 1999.
(14) Applicant: Peoria Unified School District on behalf of Sun Valley Elementary School, Peoria, AZ.
Requirement Waived: Section 1113(a)(3)(B) of the ESEA.
Duration of Waiver: Two years.
Date Granted: June 7, 1999.
(15) Applicant: California Department of Education, Sacramento, CA.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 8, 1999.
(16) Applicant: Wyoming Department of Education, Cheyenne, WY.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 8, 1999.
(17) Applicant: Georgia Department of Education, Atlanta, GA.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 8, 1999.
(18) Applicant: Washington Department of Education, Olympia, WA.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(A)(iii) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 14, 1999.
(19) Applicant: Indiana Department of Education, Indianapolis, IN.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 15, 1999.
(20) Applicant: New Hampshire Department of Education, Concord, NH.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 15, 1999.
(21) Applicant: Cobb County Public Schools on behalf of Birney Elementary School and Compton Elementary School, Marietta, GA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 16, 1999.
(22) Applicant: Kentucky Department of Education on behalf of Glasgow Independent Schools, Glasgow, KY.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 16, 1999.
(23) Applicant: Franklin County Schools on behalf of Carnesville Elementary School, Carnesville, GA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 16, 1999.
(24) Applicant: Ashworth Middle School, Calhoun, GA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 16, 1999.
(25) Applicant: Virginia Department of Education, Richmond, VA.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(B) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(26) Applicant: Nebraska Department of Education, Lincoln, NE.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(B) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(27) Applicant: Maine Department of Education, Augusta, ME.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(28) Applicant: Kentucky Department of Education, Frankfort, KY.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(29) Applicant: Oklahoma Department of Education, Oklahoma City, OK.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(B) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(30) Applicant: Arizona Department of Education, Phoenix, AZ.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(B) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 21, 1999.
(31) Applicant: Pennsylvania Department of Education on behalf of Brookville Area School District, Brookville, PA.
Requirement Waived: Section 1113(c)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1999.
(32) Applicant: Pennsylvania Department of Education on behalf of Solanco School District, Quarryville, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1999.
(33) Applicant: Pennsylvania Department of Education on behalf of Middletown Area School District, Middletown, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: June 22, 1999.
(34) Applicant: Wisconsin Department of Public Instruction, Madison, WI
Requirement Waived: Section 307(b)(2), 307(c)(2)(B), and 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 24, 1999.
(34) Applicant: South Dakota Department of Education and Cultural Affairs, Pierre, SD.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 24, 1999.
(36) Applicant: Arkansas Department of Education, Little Rock, AR.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: June 25, 1999.
(37) Applicant: Rhode Island Department of Education, Providence, RI.
Requirement Waived: Section 307(b)(2) and 307(c)(2)(B) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: July 6, 1999.
(38) Applicant: Panther Valley School District, Lansford, PA.
Requirement Waived: Section 1127(b) of the ESEA.
Duration of Waiver: One year
Date Granted: July 7, 1999.
(39) Applicant: Garnet Valley School District, Glen Mills, PA.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.

Date Granted: July 7, 1999.

(40) Applicant: Lower Merion School District on behalf of Belmont Hills Elementary School, Merion Elementary School and Cynwyd Elementary School, Ardmore, PA.

Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(41) Applicant: South Carolina Department of Education, Columbia, SC

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: One year

Date Granted: July 12, 1999.

(42) Applicant: Tennessee Department of Education, Nashville, TN.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(43) Applicant: New Jersey Department of Education, Trenton, NJ.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(44) Applicant: Riverview School District on behalf of Tenth Street School, Oakmont, PA.

Requirement Waived: Section 1113(a)(2)(B) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(45) Applicant: Hartville R–11 School District, Hartville, MO.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(46) Applicant: Mississippi Department of Education, Jackson, MS.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(47) Applicant: Alaska Department of Education, Juneau, AK.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(48) Applicant: Minnesota Department of Education, Roseville, MN.

Requirement Waived: Section 307(c) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(49) Applicant: Alabama Department of Education, Montgomery, AL

Requirement Waived: Section 307(b)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(50) Applicant: Connecticut State Department of Education, Hartford, CT.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 12, 1999.

(51) Applicant: Pennsylvania Department of Education on behalf of Berwick Area School District, Berwick, PA.

Requirement Waived: Section 1113(a)(2)(b) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 14, 1999.

(52) Applicant: Centralia School District on behalf of Oakview Elementary, Centralia, WA.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 14, 1999.

(52) Applicant: West Perry School District on behalf of Green Park and Carroll Elementary, Elliottsburg, PA.

Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 14, 1999.

(53) Applicant: Kiski Area School District-II on behalf of Bell Township Elementary, Vandergrift, PA.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 14, 1999.

(54) Applicant: Wisconsin Department of Public Instruction on behalf of the School District of Baraboo, Baraboo, WI.

Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 14, 1999.

(56) Applicant: Delaware Department of Education, Dover, DE.

Requirement Waived: Section 307(b)(2) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 20, 1999.

(57) Applicant: Upper Adams School District, Biglerville, PA.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 22, 1999.

(58) Applicant: Falls City Public Schools, Falls City, NE.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 22, 1999.

(59) Applicant: Arundel School Department, Arundel, ME.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: July 22, 1999.

(60) Applicant: Wisconsin Department of Public Instruction on behalf of the School District of Wautoma, Madison, WI.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: July 26, 1999.

(61) Applicant: Citrus County School Board, Inverness, FL.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: August 5, 1999.

(62) Applicant: Columbia County School System, Lake City, FL.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: August 5, 1999.

(63) Applicant: Hawaii Department of Education on behalf of Ilima Intermediate School, Honolulu, HI.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: August 5, 1999.

(64) Applicant: Spartanburg County School District #2 on behalf of Hendrix Elementary School, Boiling Springs, SC.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: One year.

Date Granted: August 5, 1999.

(65) Applicant: Taliaferro County School System, Crawfordville, GA.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: August 9, 1999.

(66) Applicant: Habersham County School System, Clarkeville, GA.

Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: August 9, 1999.

(67) Applicant: Centralia School District on behalf of Fords Prairie Elementary School, Centralia, WA.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: August 10, 1999.

(68) Applicant: Centralia School District on behalf of Centralia Middle School, Centralia, WA.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: August 10, 1999.

(69) Applicant: Virginia Department of Education, Richmond, VA.

Requirement Waived: Section 2206(b) of the ESEA.

Duration of Waiver: Two years.

Date Granted: August 10, 1999.

(70) Applicant: Jackson County Public Schools on behalf of Scotts Creek Elementary School, Sylvia, NC.

Requirement Waived: Section 1114(a)(1)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: August 11, 1999.

(71) Applicant: New York State Department of Education, Albany, NY.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 16, 1999.
(72) Applicant: Louisiana Department of Education, Baton Rouge, LA.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 17, 1999.
(73) Applicant: School District of Philadelphia, Philadelphia, PA.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1999.
(74) Applicant: Highline School District 401, Burien, WA.
Requirement Waived: Section 307(c)(4) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 20, 1999.
(75) Applicant: Kent Elementary School, Kent, WA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1999.
(76) Applicant: Pickens County Board of Education on behalf of Pickens County Middle School, Jasper, GA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1999.
(77) Applicant: District of Columbia Public Schools on behalf of Brent Elementary School, Oyster Elementary School, Bunker Hill Elementary School, Paul Junior High School, and Roosevelt High School, Washington, DC.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: August 20, 1999.
(78) Applicant: California Department of Education, Sacramento, CA.
Requirement Waived: Section 11004(a) of the ESEA.
Duration of Waiver: Two years.
Date Granted: August 20, 1999.
(79) Applicant: North Carolina Department of Public Instruction, Raleigh, NC.
Requirement Waived: Section 307(c)(2)(C) and 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 23, 1999.
(80) Applicant: Florida Department of Education, Tallahassee, FL.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 30, 1999.
(81) Applicant: Iron County C–4 School District, Viburnum, MO.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: August 30, 1999.
(82) Applicant: Hawaii Department of Education on behalf of Maui Waena Intermediate School, Honolulu, HI.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA
Duration of Waiver: Three years.
Date Granted: September 1, 1999.
(83) Applicant: Mississippi Department of Education, Jackson, MS.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 8, 1999.
(84) Applicant: Bangor School Department, Bangor, ME.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 8, 1999.
(85) Applicant: District of Columbia Public Schools, Washington, DC.
Requirement Waived: Section 307(b)(2) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 13, 1999.
(86) Applicant: Maine School Administrative District No.28, Camdem, ME.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 13, 1999.
(87) Applicant: Berlin Public Schools, Berlin, NH.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 13, 1999.
(88) Applicant: Kansas State Department of Education, Topeka, KS.
Requirement Waived: Section 1003(a) of the ESEA.
Duration of Waiver: One year.
Date Granted: September 15, 1999.
(89) Applicant: Bisbee Unified School District #2, Bisbee, AZ.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 20, 1999.
(90) Applicant: Oklahoma State Department of Education, Oklahoma City, OK.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 27, 1999.
(91) Applicant: Cache Public Schools, Cache, OK.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: September 27, 1999.
(92) Applicant: New Jersey Department of Education, Trenton, NJ.
Requirement Waived: Section 2209(b)(1)(C) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 6, 1999.
(93) Applicant: Southern Reynolds County R–II School District, Ellington, MO.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: October 9, 1999.
(94) Applicant: Orange County Public Schools, Orange, VA.
Requirement Waived: Section 1114(a)(1)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: October 29, 1999.
(95) Applicant: School Administrative District #58, Kingfield, ME.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: December 3, 1999.
(96) Applicant: Oktaha Public Schools, Oktaha, OK.
Requirement Waived: Section 307(c)(2)(C) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: December 10, 1999.
(97) Applicant: Oil City Area School District, Oil City, PA.
Requirement Waived: Section 1113(c)(1) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 14, 1999.
(98) Applicant: School District of Fort Atkinson, Fort Atkinson, WI.
Requirement Waived: Section 1113(a)(2) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 14, 1999.
(99) Applicant: Clover Park School District on behalf of Park Lodge Elementary School, Lakewood, WA.
Requirement Waived: Section 1114(a)(1)(B) and 1113(b)(1)(C) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 21, 1999.
(100) Applicant: Northern York County School, Dillsburg, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 21, 1999.
(101) Applicant: Red Lion Area School District, Red Lion, PA.
Requirement Waived: Section 1113(a)(2)(B) of the ESEA.
Duration of Waiver: Three years.
Date Granted: December 22, 1999.
(102) Applicant: Snowline Joint Unified School District, Phelan, CA.
Requirement Waived: Section 307(c)(4) of the Class-Size legislation.
Duration of Waiver: Three years.
Date Granted: December 30, 1999.
(103) Applicant: Fontana Unified School District, Fontana, CA.

Requirement Waived: Section 307(c)(4) of the Class-Size legislation.

Duration of Waiver: Three years.

Date Granted: December 30, 1999.

(104) Applicant: Midd-West School District, Middleburg, PA.

Requirement Waived: Section 1113(a)(2)(B) of the ESEA.

Duration of Waiver: Three years.

Date Granted: December 30, 1999.

DEADLINES FOR APPLYING FOR A WAIVER: As established in the **Federal Register** on September 23, 1999 (Vol. 64 FR 51528), the requests for waivers that would be implemented and affect school level activities beginning with the 2000–2001 school year must have been submitted to the Department in substantially approvable form no later than April 1, 2000. Requests for waivers that would be implemented and affect school-level activities beginning with the semester immediately following January 1, 2001 must be submitted to the Department in substantially approvable form no later than October 1, 2000. Requests for waivers that would be implemented and affect school-level activities beginning with the 2001–2002 school year must be submitted to the Department of Education in substantially approvable form no later than April 1, 2001.

FOR FURTHER INFORMATION CONTACT: Carla Kirksey at the Department's Waiver Assistance Line, (202) 401–7801. The Department's Waiver Guidance, which provides examples of waivers, explains the waiver authorities in detail, and describes how to apply for a waiver, is also available at this number. The Guidance and other information on flexibility are available at the Department's World Wide Web site at *http://www.ed.gov/flexibility.*

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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Dated: April 26, 2000.

Michael Cohen,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 00–10904 Filed 5–1–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare an Environmental Impact Statement for The Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Notice of Intent.

SUMMARY: On April 11, 2000, Energy Secretary Bill Richardson announced the Department of Energy's (DOE) proposal to relocate missions at Technical Area 18 (TA–18), a group of facilities at the Los Alamos National Laboratory (LANL), by the end of 2004. Secretary Richardson also announced that an environmental impact study on the proposed transfer of TA–18's missions to another location will begin immediately. Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 et seq., and the DOE Regulations Implementing NEPA (10 CFR Part 1021), the National Nuclear Security Administration (NNSA), an agency within the Department of Energy, is announcing its intent to prepare an Environmental Impact Statement (EIS) for the Proposed Relocation of the TA–18 Missions.

TA–18 supports important defense, nuclear safety, and other national security missions. Though TA–18 is judged to be secure by the Department's independent inspection office, its facilities are between 30 and 50 years old and are increasingly expensive to maintain and operate. Relocating the TA–18 missions will enable the Department to conduct these missions in a more efficient and cost-effective manner. Currently, DOE expects that the TA–18 Relocation EIS will evaluate the environmental impacts associated with relocating the TA–18 missions to the following alternative locations: (1) A different site at LANL (the preferred alternative) at Los Alamos, New Mexico; (2) the Nevada Test Site (NTS) near Las Vegas, Nevada; (3) the Sandia National Laboratory (SNL) at Albuquerque, New Mexico; and (4) the Argonne National Laboratory—West (ANL–W) near Idaho Falls, Idaho. It is possible that this list of reasonable alternatives may change during the scoping process. The EIS will also evaluate the no-action alternative of maintaining the missions at the current TA–18 location.

DATES: Comments on the proposed scope of the TA–18 Relocation EIS are invited from the public. To ensure consideration in the preparation of the EIS, comments must be postmarked by June 1, 2000. Late comments will be considered to the extent practicable. Public scoping meetings to discuss issues and receive oral comments on the scope of the EIS will be held in the vicinity of sites that may be affected by the proposed action. The public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns with DOE/NNSA officials regarding the EIS. The location, date, and time for these public scoping meetings is as follows:

Los Alamos National Laboratory—May 17, 7 p.m.–10 p.m., Betty Ehart Senior Center, 2132 Central Avenue, Los Alamos, NM 87544.

Sandia National Laboratory—May 18, 7 p.m.–10:00 p.m., Albuquerque Convention Center, 401 Second Street, N.W., Albuquerque, NM 87102.

Nevada Test Site—May 23, 7 p.m.–10 p.m., U.S. DOE Nevada Operations Office Auditorium, 232 Energy Way, North Las Vegas, NV 89030.

Argonne National Laboratory—West—May 25, 7 p.m.–10 p.m., The Shilo Inn, 780 Lindsay Blvd., Idaho Falls, ID 83402.

Any agency that desires to be designated as a cooperating agency should contact Mr. Jay Rose at the address listed below by May 31, 2000.

ADDRESSES: General questions concerning the TA–18 Project can be asked by calling 1–800–832–0885, ext. 65484, or by writing to: Mr. Jay Rose, Document Manager, TA–18 Relocation EIS, U.S. Department of Energy/NNSA, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Comments can be submitted to Mr. Rose at the address above; or faxed to: 1–202–586–0467; or e-mailed to *James.Rose@ns.doe.gov*. Please mark

envelopes, faxes, and E-mail: ''TA–18 Relocation EIS Comments.''

FOR FURTHER INFORMATION CONTACT: For general information on the NNSA NEPA process, please contact: Mr. Henry Garson, NEPA Compliance Officer for Defense Programs, U.S. Department of Energy/NNSA, 1000 Independence Avenue, SW., Washington, DC 20585; or telephone 1–800–832–0885, ext. 30470. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: On April 11, 2000, Secretary of Energy Bill Richardson announced that the Department would begin preparation of an EIS on the proposed transfer of TA–18's capabilities and up to approximately 2 tons of special nuclear materials to another location. TA–18, known as the Pajarito Site, consists of a main building, three outlying remote-controlled critical assembly buildings known as ''kivas'', several smaller laboratories, nuclear material storage vaults, and support buildings. The site is located on approximately 130 acres along Pajarito Road. The Los Alamos Critical Experiments Facility (LACEF) and other experimental facilities are located at TA–18, which is situated in the base of a canyon whose walls rise approximately 200 feet on three sides. The three kivas are Category 2 nuclear facilities (i.e., hazard analysis shows the potential for significant on-site consequences) and are within fenced areas to keep personnel at a safe distance during criticality experiments. Additionally, the entire TA–18 is bounded by a security fence to aid in physically safeguarding special nuclear material. Site access is through a guarded portal.

The principal TA–18 activities are the design, construction, research, development, and applications of experiments on nuclear criticality. Excluding security and support personnel, about 80 full-time employees work at TA–18. They provide expertise and knowledge in advanced nuclear technologies that support three primary areas: (1) Critical experiments in support of Stockpile Stewardship and other programs; (2) emergency response in support of counter-terrorism activities; and (3) safeguards and arms control in support of domestic and international programs to control excess nuclear materials. TA–18 is the nation's only facility capable of performing general-purpose nuclear materials handling for a variety of experiments, measurements and training. TA–18 also houses the Western Hemisphere's largest collection of machines for conducting nuclear safety evaluations and establishing limits for operations.

Since 1948, thousands of criticality experiments and measurements have been performed at TA–18 on assemblies using uranium-233, uranium-235, and plutonium-239 in various configurations, including nitrate, sulfate, and oxide compounds as well as solid, liquid, and gas forms. Critical assemblies at TA–18 are designed to operate at low-average power and temperatures well below phase change transition temperatures (which sets them apart from normal reactors) with low fission production and minimal inventory. Special nuclear materials are stored at kivas or in a vault. The on-site TA–18 nuclear materials inventory (about 2 metric tons of special nuclear materials) is relatively stable, and consists primarily of isotopes of plutonium and uranium. The bulk of the plutonium is metal, and is either clad or encapsulated; plutonium oxide is double-canned. The use of toxic and hazardous chemicals is limited. The criticality experiments generate very small amounts of fission products and there is little radioactive waste. Criticality experiments do not release significant emissions to the atmosphere at the site. A more detailed description of TA–18 activities and associated impacts can be found in the Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory (January 1999).

Purpose, Need, and Proposed Action

The Department proposes to provide a long-term capability to conduct criticality experiments and evaluations, develop emergency response procedures, and support non-proliferation safeguards and arms control. Since the 1980's, this capability has been based upon the operation of facilities at TA–18, some of which have been operational since 1946. Though TA–18 is judged secure by the Department of Energy's independent inspection office, its facilities are between 30 and 50 years old and are increasingly expensive to maintain and operate. The Defense Nuclear Facilities Safety Board has recommended, in 1993 and 1997, that the Department continue to maintain the capability to support the only remaining criticality safety program in the nation. Consistent with this, the Department wishes to maintain the important capabilities currently provided by TA–18 in a manner that reduces the long-term costs for safeguards and security. Relocating the TA–18 missions would reduce life-cycle costs and improve safeguards and security.

Alternatives

Currently, the NNSA expects that the TA–18 Relocation EIS will evaluate the environmental impacts associated with TA–18 missions at the following DOE sites: (1) a different location at LANL (the preferred alternative); (2) NTS; (3) SNL; and (4) ANL–W. This preliminary list of sites is based on the initial efforts of a Department-wide Option Study Group chartered to develop reasonable alternatives for conducting TA–18 missions. Site screening criteria were developed by the Group that looked for sites with existing Category I (highest level) security infrastructure; nuclear environment, safety and health infrastructure; and compatibility between the site and TA–18 missions. These alternatives are described in greater detail below.

LANL Alternative. This alternative would involve constructing a new facility near the TA–55 Plutonium Facility 4. Consolidating the TA–18 missions near the existing TA–55 facilities could significantly reduce future costs associated with safeguards and security by consolidating safeguards and security requirements. Following construction, the existing Perimeter Intrusion Detection and Assessment System (PIDAS) fence would be expanded to encompass the new facility. Other possible LANL locations for a new facility may also be identified.

NTS Alternative. This alternative would house the TA–18 missions at or near the existing Device Assembly Facility (DAF). The DAF, which became operational in 1998, has the capability to support a variety of nuclear explosive operations (including device assembly, disassembly, modification, staging, testing, repair, and surveillance). Currently, the DAF is used for assembly of sub-critical assemblies, as well as miscellaneous other national security missions. The DAF is approximately 100,000 square feet and has capacity available to accept the TA–18 missions with internal modifications and some minor external construction.

SNL Alternative. This alternative would house the TA–18 missions within TA–V at SNL. Currently, SNL operates a variety of research-oriented nuclear facilities in TA–V. Because existing space in TA–V could accommodate the TA–18 missions, no new buildings would be needed for this

alternative. Internal modifications to existing buildings would be required.

ANL–W Alternative. This alternative would house the TA–18 missions in the existing Fuel Manufacturing Facility, and possibly the Transient Reactor Test Facility and other existing facilities. New construction to expand the existing Fuel Manufacturing Facility would be required to accommodate the TA–18 missions. Security upgrades may also be necessary.

As required by the Council on Environmental Quality regulations, the TA–18 Relocation EIS will also evaluate the no-action alternative of maintaining the missions at the current TA–18 location. This alternative would maintain the current missions at Technical Area 18 as described in the expanded use alternative of the Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory and Associated Record of Decision (64 FR 50797, September 20, 1999). As stated in the Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory, previously planned routine upgrades for infrastructure and security would be conduced in order to maintain the facility.

It is possible that this list of reasonable alternatives may change during the scoping process. In addition, as the EIS is being prepared, the NNSA will be examining the TA–18 missions in order to optimize the number and kind of facilities, and the amount of special nuclear material that would be required to carry out the missions. Following completion of the EIS process, the Secretary of Energy intends to decide where and how to conduct the TA–18 missions, as well as the future use of the existing TA–18 facilities.

Identification of Environmental and Other Issues

The NNSA has identified the following issues for analysis in the EIS. Additional issues may be identified as a result of the scoping process.

1. Public and Worker Safety, Health Risk Assessment: Radiological and non-radiological impacts, including projected effects on workers and the public from construction, normal operations and accident conditions, and decommissioning and decontamination activities associated with relocating and carrying out the TA–18 missions.
2. Impacts from releases to air, water, and soil associated with relocating and carrying out the TA–18 missions.
3. Impacts to plants, animals, and habitats, including threatened or endangered species and their habitats, associated with relocating and carrying out the TA–18 missions.
4. The consumption of natural resources and energy associated with relocating and carrying out the TA–18 missions.
5. Socioeconomic impacts to affected communities from construction and operation associated with relocating and carrying out the TA–18 missions.
6. Environmental justice: Disproportionately high and adverse human health or environmental effects on minority and low-income populations associated with relocating and carrying out the TA–18 missions.
7. Impacts to cultural resources such as historic, archaeological, scientific, or culturally important sites associated with relocating and carrying out the TA–18 missions. Because some facilities at TA–18 are over 50 years old, and potentially important in the context of the Cold War, these will be evaluated for their historical significance under all alternatives.
8. Impacts associated with transportation and storage of nuclear materials.
9. Status of compliance with all applicable Federal, state, and local statutes and regulations; required Federal, state, and tribe environmental consultations and notifications; and DOE Orders on waste management, waste minimization, and environmental protection.
10. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable actions at the alternative sites.
11. Potential irreversible and irretrievable commitments of resources associated with relocating and carrying out the TA–18 missions.
12. Pollution prevention and waste management practices, including characterization, storage, treatment and disposal of wastes associated with relocating and carrying out the TA–18 missions.

NNSA anticipates that certain classified information will be consulted in the preparation of this EIS and used by decision-makers to decide where and how the capabilities at TA–18 will be carried out. The EIS may contain a classified appendix. To the extent allowable, the EIS will summarize this information in an unclassified manner.

EIS Schedule

The importance of the TA–18 missions requires that the facilities remain operational until the final decision is made and implemented so there is minimal disruption to existing programs or commitments. To support a Record of Decision for this EIS by January 2001, the major milestones for the EIS are shown below.

Public Scoping Meetings: May 2000.

Publish Draft EIS: September 2000.

Draft EIS Public Hearings: October 2000.

Publish Final EIS: December 2000.

Record of Decision: January 2001.

To facilitate this schedule, the TA–18 Relocation EIS will tier from existing EISs for the four alternative sites, as appropriate. For example, the Department has previously prepared Site-Wide EISs for LANL (Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory, January 1999), SNL (Site-Wide Environmental Impact Statement for Sandia National Laboratories, Albuquerque, New Mexico, November 1999), and NTS (Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada, August 1996) that are expected to provide much of the existing environmental information. Additionally, several NEPA documents for ANL–W facilities will be utilized, including the Electro-metallurgical Treatment Research and Demonstration Project at ANL–W Environmental Assessment (May 1996) and the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel EIS (Final EIS expected to be published in May 2000).

Public Scoping Process

To assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed, NNSA representatives will conduct public scoping meetings at the locations, dates, and times described above under **DATES.** Each scoping meeting will begin with an overview of the TA–18 missions, the current EIS alternatives, and the proposed EIS scope. Following the initial presentation, NNSA representatives will answer questions and accept comments. Copies of handouts from the meetings will be available to those unable to attend, by contacting the NNSA as described above under **ADDRESSES.**

Issued in Washington, D.C., this 26th day of April, 2000.

T. J. Glauthier,

Deputy Secretary of Energy, Department of Energy.

[FR Doc. 00–10897 Filed 5–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies (OIT); Amendment to the Notice of the Glass Industry of the Future Solicitation

AGENCY: Chicago Operations Office, DOE.

ACTION: Amendment to Notice of Solicitation Availability.

SUMMARY: The Notice of Solicitation Availability issued by the Chicago Operations Office, DOE, that appeared in the **Federal Register**, Volume 65, No. 21, on Tuesday, February 1, 2000 is amended to eliminate the requirement for teaming arrangements as a qualification criterion.

DATES: The complete solicitation document was made available on April 11, 2000 on the Internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading ''Current Solicitations'', Solicitation No. DE–SC02–00CH11037. Applications are due on June 12, 2000. Awards are anticipated by February 1, 2001 pending availability of funding.

ADDRESSES: Completed applications must be submitted to: U.S. Department of Energy, Chicago Operations Office, Attn: David E. Ramirez, Bldg. 201, Communications Center, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899.

FOR FURTHER INFORMATION CONTACT: David Ramirez at (630) 252–2133; by mail at U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by facsimile at (630) 252–5045; or by electronic mail at david.ramirez@ch.doe.gov.

SUPPLEMENTARY INFORMATION: The Notice of Solicitation Availability issued by the Chicago Operations Office, DOE, that appeared in the **Federal Register**, Volume 65, No. 21, on Tuesday, February 1, 2000 required, in part, that applicants propose a teaming arrangement of at least two glass industry companies. That requirement was eliminated as a qualification criterion from the solicitation which was issued on April 11, 2000. However, teaming arrangements are still desired and will be evaluated in accordance with the evaluation criterion identified in the solicitation.

Issuance: Issued in Argonne, Illinois on April 18, 2000.

John D. Greenwood,

Manager, Acquisition and Assistance Group.

[FR Doc. 00–10896 Filed 5–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 96–07–NG]

Office of Fossil Energy; BC Gas Utility Ltd.; Order Amending Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order to BC Gas Utility Ltd. amending the natural gas import and export authorization granted by DOE/FE Order No.1149 (1 FE ¶ 71,240). Order 1149–A extends the term from May 1, 2000, through April 30, 2002, and increases the annual limit from 5 billion cubic feet (Bcf) to 6 Bcf. Under the import/export arrangement, Canadian natural gas will be imported through the existing pipeline facilities at Sumas, Washington, and Eastport, Idaho, for storage at the Jackson Prairie Storage Field in Washington State, and then exported back to Canada.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 21, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 00–10894 Filed 5–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[ERA Docket No. 88–22–LNG; FE Docket No. 96–99–LNG]

Office of Fossil Energy: Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Application To Amend Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed jointly on March 22, 2000, by Phillips Alaska Natural Gas Corporation (PANGC) and Marathon Oil Company (Marathon) to amend their authorization to export liquefied natural gas (LNG) from the Kenai peninsula of Alaska to Japan. The Applicants seek approval of a revision in the pricing provisions of their Japanese sales contracts. The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, June 1, 2000.

ADDRESSES: Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3E–042, FE–34, 1000 Independence Avenue, SW, Washington, DC 20585,

FOR FURTHER INFORMATION CONTACT: Patrick J. Fleming, Allyson C. Reilly, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4819, (202) 586–9394.

Diane Stubbs, Office of the Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–75, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

PANGC, a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly owned subsidiary of Phillips Petroleum Company, a Delaware corporation. Marathon, an Ohio corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of USX Corporation, also a Delaware corporation. PANGC and Marathon are not affiliated with each other. They own and operate natural gas liquefaction and marine terminal facilities at Kenai, Alaska.

The Applicants have maintained an uninterrupted export relationship with Japan's two largest utilities, The Tokyo Electric Power Company Inc. (Tokyo Electric) and Tokyo Gas Company Limited (Tokyo Gas) since 1967.[1] The most recent of numerous amendments [2]

[1] *See* Federal Power Commission Order issued April 19, 1967 (37 FPC 777).

[2] *See* DOE/ERA Opinion and Order No. 49 (1 ERA ¶70,116, December 14, 1982) (extended export authority); DOE/ERA Opinion and Order 49–A (I ERA 170,127, April 3, 1986) (transferred authorization from Phillips Petroleum Company to Phillips 66 Natural Gas Company); DOE/ERA

Continued

to the Applicant's original export authorization was granted by DOE/FE Opinion and Order No. 1473 (Order 1473) on April 2, 1999. It extended their authority to export up to 64.4 trillion British thermal units (TBtus) [3] of LNG per year through March 31, 2009.[4]

DOE/FE Opinion and Order No. 261–D, issued March 21, 1995, approved the currently authorized pricing formula applicable to the Applicants' LNG export sales.[5] This formula is described in an April 19, 1994, ''Third Amendatory Agreement'' to the Applicants'' June 17, 1988, LNG sales contract with Tokyo Electric and Tokyo Gas. It reflects the weighted average price over periods of three consecutive months relative to all crude oils imported into Japan each month. The crude oil prices are obtained from *Japan Exports and Imports Monthly,* a publication of the Japan Tariff Association. The arithmetic average price is subject to a ceiling of $26.00 per barrel and a floor of $13.00 per barrel. If the arithmetic price is outside this range, the formula provides for redetermination of the contract price.

In response to changes in the Japanese LNG markets, the parties met in 1999 to discuss the comparability of Alaska LNG pricing with that of other projects supplying LNG to Japan under long-term contracts. As a result of these discussions, they signed a ''Fourth Amendatory Agreement'' on November 16, 1999, which revises the authorized pricing formula. The applicants ask DOE to approve the new formula for use during the period April 1, 1998, to March 31, 2004.

Under the new formula proposed by the Applicants, the price is calculated monthly based primarily on the weighted average price of all crude oils imported into Japan in the third month prior to the time the LNG is unloaded. In addition, the revised price formula includes an adjustment factor to keep the Applicants' LNG competitive with other sales of LNG in the Japanese market.[6] Redetermination of the contract price is triggered when the weighted average price of crude oil is outside the range of $11.00 to $25.00 per barrel.

The Applicants assert the revised formula is similar to the price formulas used by most other LNG projects that sell into the Japanese market. They also assert the new formula will permit ''more market responsive'' pricing, thereby maintaining the competitiveness of their LNG exports.

The application of PANGC and Marathon to amend their authorization to export LNG from Alaska to Japan will be reviewed pursuant to section 3 of the Natural Gas Act,[7] as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486), and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127.[8] Under section 3, an export from Alaska to a foreign country must be authorized unless there is a finding ''it will not be consistent with the public interest.'' [9] Section 3 thus creates a statutory presumption in favor of approval of this application which opponents bear the burden of overcoming.

Furthermore, in evaluating an export application, the Department applies the principles described in DOE Delegation Order No. 0204–111, which focuses primarily on domestic need for the natural gas to be exported and the Secretary's natural gas import policy guidelines, which presume trade arrangements freely negotiated by commercial parties will benefit the public.[10]

The Department previously determined there is no domestic need for the LNG exports affected by the revised price formula and will evaluate the requested amendment based on whether it is in accord with DOE's international gas trade policy.[11] Parties that may oppose this application should comment in their responses on this issue as it relates to the contract price revision. The Applicants assert the proposed amendment is in the public interest. Parties opposing the amendment bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Natural Gas & Petroleum Import & Export Activities at the address listed above.

It is intended that a decisional record on this application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request

Opinion and Order No. 206 (1 ERA ¶ 70,128, November 16, 1987) (amended pricing formula); DOE/ERA Opinion and Order No. 261 (1 ERA ¶ 70,130, July 28, 1988) (extended export authority); DOE/FE Opinion and Order No. 26 1–A (I FE ¶ 70,454, June 18, 1991) (amended pricing formula); DOE/FE Opinion and Order No. 26 1–B (I FE 170,506, December 19, 1991) (transferred authorization from Phillips 66 Natural Gas Company to PANGC; DOE/FE Opinion and Order 261–C (I FE ¶ 70,607, July 15, 1992) (increased annual export authority from 52 trillion Btu's to 64.4 trillion Btu's—the provision for yearly sales of up to 106 percent of annual contract quantity remained unchanged); DOE/FE Opinion and Order No. 26 1–D (1 FE ¶ 71,087, March 2, 1995) (amended pricing formula); DOE/FE Opinion and Order No. 261–E (2 FE ¶ 71,429, July 18, 1997) (dismissed complaint); and DOE/FE Opinion and Order No. 1473 (2 FE ¶ 70,317) (extended export authority).

[3] The gaseous equivalent to approximately 64.4 billion cubic feet.

[4] Order No. 1473 was issued in FE Docket No. 96–99–LNG.

[5] *Supra* note 2. DOE/ERA Opinion and Order No. 261, the lead Order in this sequence of authorizations, was issued July 28, 1988, in ERA Docket No. 88–22–LNG.

[6] For example, if the weighted average price of crude oil imported into Japan is $18.00 per barrel (equivalent to $3.10 per million Btu (MMBtu), DOE calculated the LNG would be sold for $3.37 per MMBtu using the current pricing scheme. In contrast, DOE estimated the LNG sales price would be $3.44 per MMBtu under the new contract methodology. (The heat content of one barrel of crude oil is approximately 5.8 MMBtu).

[7] 15 U.S.C. § 717b.

[8] See 49 F.R. 6684, February 22, 1984. On January 6, 1989, certain functions including the regulation of natural gas imports and exports, were transferred from the Economic Regulatory Administration (a predecessor of FE) to FE. DOE Delegation Order No. 0204–127 specifies the transferred functions (54 FR 11436, March 20, 1989).

[9] See supra note 5.

[10] See 49 FR 6684, February 22, 1984. While those policy guidelines deal specifically with imports, the principles are applicable to exports as well (Yukon Pacific Corporation, DOE/FE Opinion and Order No. 350, 1 FE ¶ 70,259 (1989), reh'g denied, 1 FE ¶ 70,303 (1990).

[11] See supra note 2.

that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate, why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by PANGC and Marathon is available for inspection and copying in the Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–042, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 21, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 00–10895 Filed 5–1–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–74–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Corporate Name Change

April 26, 2000.

Take notice that on January 27, 2000, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan), 370 Van Gordon Street, P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP00–74–000 a motion pursuant to the Natural Gas Act and Rule 212 of the Commission's Rules and Regulations to substitute the name of Kinder Morgan for K N Interstate Gas Transmission Co. on all proceedings before the Commission. Take notice that on February 25, 2000, Kinder Morgan filed in Docket No. GT00–19–000 a copy of its proposed FERC Gas Tariff, Fourth Revised Volume Nos. 1–A and 1–B and Second Revised Volume Nos. 1–C and 1–D, reflecting the name change, with a Notice of Tariff Filing issued February 29, 2000. It is stated that Kinder Morgan also filed the tariff electronically. On March 16, 2000, a letter order was issued accepting the new tariff. On April 20, 2000, a notice was issued in Docket No. GT00–19–001 stating that Kinder Morgan filed tariff sheets containing new maps as directed in the Commission's March 16 order. In Docket No. GT00–19–002, Kinder Morgan filed on April 20, 2000, revised tariff sheets replacing the title sheets in each of the 4 volumes, clarifying that the previous tariff is cancelled and superseded by the current one.

Any person desiring to be heard or to make any protests with reference to said application should on or before May 8, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Kinder Morgan to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–10859 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2071–000]

Lakefield Junction, L.P.; Notice of Withdrawal

April 26, 2000.

Take notice that on April 18, 2000, Lakefield Junction, L.P. filed a letter with the Federal Energy Regulatory Commission withdrawing its Petition for Order Accepting Market-Based Rate Schedule for Filing and Granting Waivers and Blanket Approvals submitted for filing in this docket on March 31, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 9, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10864 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–184–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

April 26, 2000.

In the Commission's order issued on March 1, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, May 11, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–10862 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 90 FERC ¶ 61,342 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–75–002]

Questar Pipeline Company; Notice of Compliance Filing

April 26, 2000.

Take notice that on April 19, 2000, Questar Pipeline Company (Questar) tendered for filing and acceptance, to be effective March 10, 2000, Substitute Sixth Revised Sheet No. 2, Substitute Seventh Revised Sheet No. 10, and Substitute First Revised Sheet No. 330 to Original Volume No. 3 of its FERC Gas Tariff.

On March 20, 2000, Questar filed tariff sheets to be effective January 5, 2000. The Commission issued a letter order on April 11, 2000, requiring Questar to file certain revised tariff sheets, within 15 days of the order dated, to correct a typographical error and change the effective date of the tariff sheets to March 10, 2000. Questar's filing complies with the Commission's April 11, 2000, letter order.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10860 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–199–000]

Reliant Energy Gas Transmission Company; Notice of Rescheduling of Technical Conference

April 26, 2000.

In the Commission's order issued on March 31, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference has been rescheduled for Tuesday, May 16, 2000, at 9:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–10863 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 90 FERC ¶ 61,341 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–118–000, et al.]

Indeck Colorado, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 26, 2000.

Take notice that the following filings have been made with the Commission:

1. Indeck Colorado, LLC

[Docket No. EG00–118–000]

Take notice that on April 21, 2000, Indeck Colorado, LLC, filed an amendment to its application for determination of exempt wholesale generator status.

Comment date: May 17, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Split Rock Energy LLC and Minnesota Power, Inc.

[Docket No. ER00–1857–001]

Take notice that on April 21, 2000, Split Rock Energy LLC, and Minnesota Power, Inc., submitted an amendment to the Application of Split Rock Energy LLC, for Market-Based Rate Authority, and Proposed Revisions to Minnesota Power, Inc. Wholesale Coordination Service Tariff No. 2.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER00–2258–000]

Take notice that on April 21, 2000, Puget Sound Energy, Inc. tendered for filing an executed Mutual Netting/Settlement Agreement with PacifiCorp.

A copy of the filing was served upon PacifiCorp.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER00–2259–000]

Take notice that on April 21, 2000, Puget Sound Energy, Inc. tendered for filing an executed Mutual Netting/Settlement Agreement with PacifiCorp Power Marketing, Inc.

A copy of the filing was served upon PacifiCorp Power Marketing, Inc.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER00–2260–000]

Take notice that on April 21, 2000, Commonwealth Edison Company (ComEd) submitted for filing four unexecuted Short-Term Firm Transmission Service Agreements (Agreements) establishing Reliant Energy Services, Inc. (RESI), Duke Energy Trading & Marketing, LLC (DETM), Constellation Power Source, Inc. (CPS), and Merchant Energy Group of the Americas, Inc. (MEGA) as short-term firm customers under the terms of ComEd's OATT.

ComEd requests various effective dates to coincide with the first day of service to RESI, DETM, CPS and MEGA under this type of Service Agreement.

Copies of this filing were served on RESI, DETM, CPS, and MEGA.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2261–000]

Take notice that on April 21, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a request to amend Schedule 10, Retail Transmission Service, of their Pro Forma Open Access Transmission Tariff to make Schedule 10 applicable only to Pennsylvania customers, to update its provisions to reflect current circumstances, and to make conforming and editorial changes.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and to Schedule 10 customers.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER00–2262–000]

Take notice that on April 21, 2000, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Amerada Hess Corporation, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing to the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date for this Service Agreement is April 10, 2000.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER00–2263–000]

Take notice that on April 21, 2000, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Amerada Hess Corporation, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing to the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is April 10, 2000.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Pinnacle West Capital Corporation, and Arizona Public Service Company and APS Energy Services Company, Inc.

[Docket No. ER00–2268–000]

Take notice that on April 21, 2000, Pinnacle West Capital Corporation (PWCC), filed an application for an order authorizing it to make wholesale sales of electric power at market-based rates, waiving certain of the Commission's regulations and seeking blanket approval to engage in certain transactions. PWCC, Arizona Public Service Company and APS Energy Services Company, Inc. (collectively, the Pinnacle West Companies), also seek permission to transact among themselves at market-based rates and for modification of their wholesale code of conduct requirements and certain wholesale contracts.

Copies of this filing have been served upon all of APS's customers who take service under APS's market rate tariff and customers who are served under tariffs that include system incremental cost or fuel adjustment clauses.

Comment date: May 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Montana Power Company

[Docket No. SC00–1–000]

Take notice that on April 21, 2000, Montana Power Company (Montana Power) filed pursuant to the Federal Energy Regulatory Commission's (FERC) Order No. 888 and Section 205 of the Federal Power Act supplements to network transmission service agreements with Central Montana Electric Power Cooperative, Inc. (Central Montana) and Big Horn County Electric Cooperative, Inc. (Big Horn) that will enable it to recover wholesale stranded costs from such customers. Montana Power states that when it acquired its generation resources, it reasonably expected to provide wholesale electric service to Central Montana and Big Horn for the indefinite future. Montana Power further states that as a result of the determination of those customers to obtain generation services from alternative suppliers, it is entitled to recover stranded costs from them in accordance with FERC Order No. 888.

Montana Power states that because it sold substantially all of its generation resources in December 1999, the revenues-lost methodology generally followed by the FERC in stranded cost proceedings is inapplicable to calculation of its stranded costs. Montana Power has therefore proposed an alternative methodology for calculation of stranded costs and has requested a waiver of the Commission's regulations to the extent necessary to use that method.

Montana Power has proposed to make each supplement effective on June 23, 2000.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER00–2272–000]

Take notice that on April 20, 2000, PacifiCorp filed a Certificate of Concurrence in Docket No. ER00–1583–000 which has been reassigned the above-referenced docket.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10887 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–81–000, et al.]

Midwest Generation, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 25, 2000.

Take notice that the following filings have been made with the Commission:

1. Midwest Generation, LLC

[Docket No. EC00–81–000]

Take notice that on April 20, 2000, Midwest Generation, LLC (Applicant) tendered for filing an application under Section 203 of the Federal Power Act (FPA) for approval of the transfer to a business trust of transformers and interconnection facilities (Facilities) associated with 71 peaking generators in Illinois that are to be financed pursuant to a sale/leaseback arrangement. Applicant will remain the owner and operator of the Facilities for jurisdictional purposes under the FPA.

Comment date: May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. EME/CDL Trust

[Docket No. EG00–135–000]

Take notice that on April 21, 2000, EME/CDL Trust filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding title to 71 combustion turbine units and associated generation and transmission equipment in Illinois, totaling approximately 934 MW (summer rated). The Facilities will be leased by applicant to Edison Mission Energy, or a subsidiary, which in turn will lease the Facilities to Midwest Generation, LLC, which will operate the Facilities as an exempt wholesale generator.

Comment date: May 16, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Competitive Utility Services Corporation

[Docket No. ER97–1932–013]

Take notice that on April 18, 2000 Competitive Utility Services Corp. (CUSCO) tendered for filing with the Federal Energy Regulatory Commission a Compliance Filing relating to the above docket.

Comment date: May 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation; California Independent System Operator Corporation

[Docket No. ER98–3760–005; Docket Nos. EC96–19–053 and ER96–1663–056 (Not Consolidated)]

Take notice that on April 20, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a Compliance filing in the above-captioned docket. The purpose of the filing is to update the ISO Tariff sheets from the Offer of Settlement accepted by the Commission in this matter to reflect subsequent ISO Tariff Amendments approved by the Commission.

The ISO states that this filing has been served on the parties on the restricted service list adopted by the Commission in this proceeding.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER00–2023–001]

Take notice that on April 20, 2000, Central Maine Power Company (CMP), tendered for filing executed local network operating agreements (LNOAs) for the following customers:

(1) Sunday River Skiway; and

(2) United Technologies Corporation, Pratt & Whitney Division, North Berwick, Maine

On March 30, 2000, in the above-captioned proceeding, CMP filed executed service agreements for local network transmission service and unexecuted LNOAs between CMP and the above-listed Transmission Customers. Since that filing, CMP has negotiated with these Transmission Customers and has reached an agreement regarding the LNOAs. The instant filing replaces the unexecuted LNOAs for the above-listed Transmission Customers with executed LNOAs.

Copies of this filing have been served upon the Maine Public Utilities Commission and copies of this filing (specific to the particular customer only) have been sent to the customers listed above.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2252–000]

Take notice that on April 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 38 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and filed Amendment No. 1 to Supplement No. 38 to incorporate a Netting Agreement with Carolina Power & Light Company into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of March 27, 2000 to Carolina Power & Light Company and make the Netting Agreement effective as of April 5, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER00–2062–001]

Take notice that on April 20, 2000, Central Maine Power Company (CMP) tendered for filing unexecuted local network operating agreements for the following customers:

(1) Bath Iron Works Corp.; (2) Boralex Athens Energy; (3) Boralex Stratton Energy; (4) Brunswick Naval Air Station; (5) Cascade Auburn Fiber; (6) Champion International; (7) The Chinet Company; (8) Dragon Products Company; (9) Fairchild Semiconductor; (10) Forster Inc.; (11) Guilford of Maine, Inc.; (12) International Paper—Jay; (13) International Paper—Masonite; (14) Mead Paper; (15) National Semiconductor; (16) Newark Group—Gardiner Paperboard; (17) PH

Chadbourne & Company; (18) Poland Springs Bottling; (19) Portsmouth Naval Shipyard—Kittery; (20) Portland Pipe Line Corp. —Papoose Pond; (21) Portland Pipe Line Corp.—Raymond; (22) Portland Pipe Line Corp.—Tank Farm; (23) Shermag Inc.; (24) SLC Operating Co.; (25) Stone & Webster Eng. Corp.—Maine Yankee; (26) Sugarloaf Mountain Corp. (Quad 4); (27) Sugarloaf Mountain Corp.; (28) Tree Free Fiber Co., LLC, Receivership; and (29) Wausau Papers—Otis.

Copies of this filing have been served upon the Maine Public Utilities Commission and copies of this filing (specific to the particular customer only) have been sent to the customers listed above.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Fitchburg Gas and Electric Light Company

[Docket No. ER00–2253–000]

Take notice that on April 20, 2000, Fitchburg Gas and Electric Light Company (FG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission or FERC) a proposed addition to FG&E's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 4. FG&E proposes to add SCHEDULE 9—Distribution Adder Under Open Access Transmission Tariff, that would authorize FG&E to propose a charge for a wholesale transmission customer's use of its distribution facilities in the provision of service under its tariff. Such charges would be determined on a case-by-case basis, subject to FERC approval. Fitchburg Gas and Electric Light Company also tendered for filing a Service Agreement For Network Integration Transmission Service and a Network Operating Agreement under its Open Access Transmission Tariff with the Massachusetts Bay Transportation Authority.

FG&E requests that the proposed tariff page, Original Sheet No. 138A, Service Agreement For Network Integration Transmission Service, and Network Operating Agreement be made effective on July 1, 2000.

A copy of this filing has been sent to all parties listed on the official service list in Docket No. OAO97–6–000, FG&E's original Open Access docket, all parties in Docket No. OA97–635–000, and customers. This filing has also been sent to the Massachusetts Department of Telecommunications and Energy.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota)

[Docket No. ER00–2254–000]

Take notice that on April 20, 2000, Northern States Power Company (Minnesota) (NSP) tendered for filing a Construction Agreement and an Interconnection and Transmission Capability Agreement between NSP and Lakefield Junction, L.P.

NSP requests that the Commission accept the Agreement effective March 21, 2000.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–2255–000]

Take notice that on April 20, 2000, Cinergy Services, Inc., (Cinergy) as agent for and on behalf of its affiliated operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (the Cinergy Operating Companies), tendered for filing a confirmation letter for a multi-year transaction whereby the Cinergy Operating Companies will sell capacity and associated energy to Southern Indiana Gas and Electric Company pursuant to the Cinergy Operating Companies' Power Sales Tariff.

Copies of the filing have been served upon Southern Indiana Gas and Electric Company and the Indiana Utility Regulatory Commission.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. TXU Electric Company

[Docket No. ER00–2256–000]

Take notice that on April 20, 2000, TXU Electric Company (TXU Electric) tendered for filing a revised tariff to provide open-access, non-discriminatory wholesale transmission service to, from and over certain HVDC Interconnections (Revised TFO Tariff) to supersede TXU Electric's current FERC Electric Tariff, Fourth Revised Volume No. 1 (Current TFO Tariff).

Copies of the filing were served on all parties receiving service under TXU Electric's Current TFO Tariff, as well as the Public Utility Commission of Texas.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. TXU Electric Company

[Docket No. ER00–2257–000]

Take notice that on April 20, 2000, TXU Electric Company (TXU Electric) and TXU SESCO (jointly referred to herein as TXU) tendered for filing a revised tariff to provide open-access, non-discriminatory wholesale transmission service to Tex-La Electric Cooperative of Texas, Inc. (Revised Tex-La Tariff) to supersede TXU's current FERC Electric Tariff, Original Volume No. 2 (Current Tex-La Tariff).

Copies of the filing were served on Tex-La Electric Cooperative of Texas, Inc., as well as the Public Utility Commission of Texas.

Comment date: May 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Richard J. Stegemeier

[Docket No. ID–3027–001]

Take notice that on April 19, 2000, Richard J. Stegemeier tendered for filing with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 305(b) of the Federal Power Act, 16 U.S.C. § 825d(b), for authority to hold interlocking positions.

Comment date: May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Valley Electric Corporation

[Docket No. OA96–126–001]

Take notice that on April 19, 2000, Ohio Valley Electric Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. OA97–195–001]

Take notice that on April 19, 2000, Duquesne Light Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10858 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6375–006]

H.E.E.D. Co., Inc.; Notice of Availability of Environmental Assessment

April 26, 2000.

In Accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the revocation of the exemption for the Slaughterhouse Gulch Project, No. 6375–006. The Slaughterhouse Gulch Project is located on Slaughterhouse Gulch Creek in Twin Falls County, Idaho. The exemption is being revoked for failure to operate the project or to respond to requests to surrender the exemption. A Final Environmental Assessment (FEA) was prepared, and the FEA finds that revoking the exemption would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA has been attached to and made a part of an Order Revoking Exemption from licensing, issued April 26, 2000, for the Slaughterhouse Gulch Project (FERC No. 6375–006). The FEA is available for inspection and reproduction at the Commission's Public Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies of the FEA also may be obtained by calling (202) 208–1371, or by e-mail at *Public.ReferenceRoom@ferc.fed.us.* The FEA may also be viewed on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–10888 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 26, 2000.

Take notice that the following hydroelectric application has been filed with the commission and is available for public inspection:

a. *Type of application:* Exemption, under 5 Megawatts or Less.

b. *Project No.:* 11838–000.

c. *Date filed:* April 10, 2000.

d. *Applicant:* Wynning Resources Roanoak Limited Partnership.

e. *Name of project:* Roanoak Hydroelectric Project.

f. *Location:* On the Howard's Fork of the San Miguel River near the Town of Telluride, Colorado, within the county of San Miguel, Colorado. The project will use some federal land administered by the U.S. Forest Service.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant contact:* Mr. E. Lee Wynne, Wynning Resources, Inc., 4710 Kannah Creek Road, Whitewater, Colorado 81527, (970) 243–8284.

i. *FERC contact:* Timothy Looney (202) 219–2854 or E-mail address at timothy.looney@ferc.fed.us.

j. *Deadline for filing additional study requests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. The proposed project consists of a diversion weir, pipeline and power house containing a turbine generating unit with a total nameplate rating of 325-kilowatts, and appurtenant facilities. The project would have an annual generation of 2,000,000 kilowatthours.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice we are initiating consultation with the Colorado State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–10861 Filed 5–1–00; 8:45 am]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

ACTION:

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 3, 2000, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance.

The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—April 13, 2000 (Open).

B. Report

—National Charter Application Process.

C. New Business

1. Regulations

a. Review of Significant Regulatory Actions Pursuant to E.O. 12866; and
b. Stockholder Vote on Like Lending Authority-Draft Proposed Regulation.
2. Other—Corporate Approvals
a. Revision of PS–63, ''Policy Statement on Farm Credit Institution Names'' (NV 96–22); and
b. Consolidation/Subsidiary Structure Proposal from Farm Credit of Colorado Springs, PCA/FLCA, Farm Credit Services of Southeast Colorado, PCA/FLCA; Farm Credit of Lamar FLCA; and Monte Vista PCA.

Closed Session*

D. Report

1. OSMO Report.

Dated: April 27, 2000.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 00–11011 Filed 4–28–00; 2:17 pm]

BILLING CODE 6705–01–P

* Session closed-exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 25, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0168.

Title: Section 43.43—Reports of Proposed Changes in Depreciation Rates.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 4,000–6,000 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Total Annual Burden: 40,000 hours.

Total Annual Cost: N/A.

Needs and Uses: In Report and Order, CC Docket No. 98–91, the Commission streamlined its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent LECs, expanding the prescribed range for the digital switching plant account, and eliminating the theoretical reserve study requirement for mid-sized LECs. The Commission also established a waiver process whereby price cap incumbent LECs can free themselves of depreciation regulation. Also, see the Further Notice of Proposed Rulemaking in CC Docket No. 98–137 for additional proposals soliciting comment to further reduce burden placed on price cap ILECs.

OMB Control No.: 3060–0395.

Title: The ARMIS USOA Report; The ARMIS Service Quality Report; and the ARMIS Infrastructure Report.

Report No.: FCC Reports 43–02, 43–05, and 43–07.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 5.7 hours to 550 hours.

Frequency of Response: Recordkeeping requirement, on occasion and annual reporting requirements.

Total Annual Burden: 29,366 hours.

Total Annual Cost: N/A.

Needs and Uses: The USOA Report provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The Service Quality Report provides service quality information in the areas of interexchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap companies. The Infrastructure Report provides switch deployment and capabilities data. The Commission modified the requirements for FCC Report 43–02 in CC Docket 99–253, Report and Order. FCC Reports 43–05 and 43–07 remain unchanged.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10890 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 26, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0734.

Title: Accounting Safeguards, CC Docket 96–150, (47 U.S.C. Sections 260, 271–276 and 47 CFR Sections 53.209, 53.211 and 53.213).

Form No.: SEC 10–K Form.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 27.

Estimated Time Per Response: 1 hour to 6,056 hours.

Frequency of Response: Biennial, annual and on occasion reporting requirements, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 172,560 hours.

Total Annual Cost: $633,000.

Needs and Uses: In the Report and Order in CC Docket 96–150, the Commission addressed the accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Telecommunications Act of 1996. The Report and Order prescribed the way ILECs, including the BOCs, must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and CPE manufacturing and others. The information collected under this submission enables the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers.

OMB Control No.: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Sections 64.601–64.605).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal government.

Number of Respondents: 5,052.

Estimated Time Per Response: .166 hours to 365 hours.

Frequency of Response: Annual, on occasion, and every 5 years reporting requirements, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 26,832 hours.

Total Annual Cost: N/A.

Needs and Uses: Title IV of the ADA requires the Commission to ensure that telecommunications relay services are available to persons with hearing and speech disabilities in the United States. The Commission is required by 44 U.S.C. 225(d)(3) to enact and oversee a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission recently modified its rules to, among other things, require the notification of substantive changes to a state's TRS program and to allow for the filing of informal complaints. The information is needed to ensure compliance with agency policy.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10891 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 24, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0551.

Title: Sections 76.1002 and 76.1004, Specific Unfair Practices Prohibited.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 52.

Estimate Time Per Response: 1 to 25 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 676 hours.

Total Annual Costs: $97,500.

Needs and Uses: The Commission staff will use this information to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of section 19 of the 1992 Cable Television Consumer Protection and Competition Act and section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Telecommunications Act amends the restrictions in section 628 to include common carriers and their affiliates that provide video programming.

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, 47 CFR 2.911, 2.960, and 2.1033(a).

Form Number: FCC 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,600.

Estimate Time Per Response: 18 to 30 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 134,400 hours.

Total Annual Costs: $1,120,000.

Needs and Uses: The Commission Rules require approval prior to marketing of equipment regulated under certain sections of Parts 15 and 18, based on the showing of compliance with technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating in the licensed service also require equipment authorization as established in the procedural Rules in Part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary, may be used for investigating complaints of harmful interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10841 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 24, 2000.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station Authorization.

Form Number: FCC 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; State, Local, or Tribal Governments.

Number of Respondents: 973.

Estimate Time Per Response: 3.166 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $184,000.

Needs and Uses: Cable television system owners or operators and MMDS operators use FCC Form 327 to apply for cable television relay service station authorizations (CARS). The Commission uses the information to determine whether applicants meet basic statutory requirements and are qualified to become or continue as Commission licensees.

OMB Control Number: 3060–0568.

Title: Commercial Leased Access Rates, Terms, and Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,330.

Estimate Time Per Response: 2 minutes to 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 94,171 hours.

Total Annual Costs: $74,000.

Needs and Uses: The Commission and prospective leased access programmers use this information to verify rate calculations for leased access channels and to eliminate uncertainty in negotiations for leased commercial access. The Commission's leased access requirements are designed to promote diversity of programming and competition in programming delivery as required by section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–10842 Filed 5–1–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS).

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: June 1, 2000.

Place: Room N–309, Building N, National Emergency Training Center (NETC), 16825 South Seton Avenue in Emmitsburg, Maryland 21727.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; and reports of other Interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447–1231, on or before Tuesday, May 30, 2000.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been

approved at the next FICEMS Committee Meeting on September 7, 2000.

Kenneth O. Burris, Jr.,

Chief Operating Officer, United States Fire Administration.

[FR Doc. 00–10905 Filed 5–1–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303–2713:

1. Quitman Management Corporation, Inc., and Speed Bankshares, L.P., both of Meridian, Mississippi; to become bank holding companies by acquiring 51 percent of the voting shares of Great Southern Capital Corporation, Meridian, Mississippi, and thereby indirectly acquire Great Southern National Bank, Meridian, Mississippi.

2. Synovus Financial Corp., Columbus, Georgia; to acquire 100 percent of the voting shares of pointpathbank, N.A. (in organization), Columbus, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Landmark Financial Group, Inc., Belvidere, Illinois; to acquire 100 percent of the voting shares of Leland National Bancorp, Inc., Leland, Illinois, and thereby indirectly acquire LNB National Bank, Leland, Illinois.

2. Mahaska Investment Company ESOP, Oskaloosa, Iowa; to acquire an additional 2.05 percent for 11.58 percent in aggregate of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa; Pella State Bank, Pella, Iowa; and Central Valley Bank, Ottumwa, Iowa; Midwest Federal Savings & Loan of Eastern Iowa, Burlington, Iowa, and thereby engage in operating savings and loan associations pursuant to § 225.28(b)(4).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Enterbank Holdings, Inc., Clayton, Missouri; to acquire 100 percent of the voting shares of Commercial Guarantee Bancshares, Inc., Overland Park, Kansas, and thereby indirectly acquire CGB Acquisition Corp., Overland Park, Kansas, and First Commercial Bank, N.A., Overland Park, Kansas. In connection with its application, Applicant also has applied to acquire CGB Capital Corp, Overland Park, Kansas, and thereby engage in the following nonbank activities: financial and investment advisory activities pursuant to § 225.28(b)(6), private placement services pursuant to § 225.28(b)(7)(iii), and management consulting and counseling activities pursuant to § 225.28(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, April 26, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10845 Filed 5–1–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00047]

Cooperative Agreement to Test, Disseminate, and Evaluate (A) Educational Materials and Messages, and (B) Training Programs Concerning Prevention and Control of Viral Hepatitis; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to test, disseminate, and evaluate educational materials and messages for prevention and control of viral hepatitis, and/or to develop, implement, and evaluate training programs for health professionals to address prevention and control of viral hepatitis. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of ''Healthy People 2010'', visit the internet site http://www.health.gov/healthypeople.

The purpose of the program is to evaluate and disseminate health education materials and messages and develop and implement training programs that will lead to reduction of the incidence of viral hepatitis in the United States (U.S.) through an increased awareness of viral hepatitis among health professionals, high risk populations, and the general public. One goal of this program is to assist national health organizations in testing and disseminating accurate information on viral hepatitis to target audiences (i.e., at-risk populations, patients, and the general public). A second goal of the program is to aid national and regional health organizations in training and educating health care professionals to prevent and control the spread of viral hepatitis. Through testing, dissemination, and evaluation of accurate educational materials and messages, the following objectives can be met: (1) Increase the target population's awareness of risk factors for and ways to prevent infection with viral hepatitis, and (2) increase the number of persons at high risk of

infection who seek and obtain appropriate viral hepatitis prevention and control services. Through development and implementation of training for health professionals, the following objectives can be met: (1) improve health care professionals' knowledge of viral hepatitis prevention and control; and (2) increase the number of health professionals and organizations who offer appropriate viral hepatitis prevention and control services. Applicants may apply for one or both components of this announcement.

B. Eligible Applicants

Assistance will be provided only to national or regional (multi-state) nonprofit organizations which currently devote their activities and resources to educating the public, patients, and health professionals about the prevention and control of viral hepatitis and viral-hepatitis-related liver disease, or who devote a major portion of their activities to educating the public, patients, and health care professionals about the prevention and control of other blood-borne viral infections, vaccine-preventable diseases, or sexually transmitted diseases, and could readily expand to cover viral hepatitis. For the purposes of this announcement, a national organization is one that has members or chapters in more than 25 states and conducts prevention information and/or education activities in those areas.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $900,000 is available in FY 2000 to fund approximately six awards. It is expected that the average award will be $150,000, ranging from $50,000 to $350,000. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to 3 years. Approximately $400,000 will be available for Part A, with an average award ranging from $50,000 to $150,000; for Part B, approximately $200,000 will be available with average awards range being $100,000—$200,000; and for combined A and B approximately $200,000 will be available for an average award of $100,000—$200,000. The funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for the activities listed under CDC Activities, CDC Activities will apply to each part (A; B; and A & B). Applicants must indicate for which part they intend to seek funding under this agreement: Part A; Part B; or both (A and B).

Part A. Testing, Integration, Dissemination, Evaluation of Materials and Messages

Recipient Activities

1. Identify gaps in existing educational messages and materials, especially for persons at high risk for viral hepatitis;

2. Conduct a needs assessment to determine what types of materials and messages might best reach targeted audiences (e.g., adolescents at high risk for infection, parents of children at risk for infection, high risk adults, health care providers).

3. Identify and test existing educational health materials and messages that fill identified gaps through collaboration with organizations and groups that represent the target audiences, including high risk groups, health care professionals and organizations, and the general public. Identified health messages and materials should incorporate accurate information on viral hepatitis, which is consistent with published CDC guidelines on prevention and control of hepatitis A, B, and C including:

a. CDC. Prevention of hepatitis A through active or passive immunization: recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 1999;48(No.RR–12).

b. CDC. Recommendations for prevention and control of hepatitis C virus (HCV) infection and HCV-related chronic disease. MMWR 1998;47(No.RR–19), 1–33.

c. CDC. Vaccine-preventable diseases: improving vaccination coverage in children, adolescents, and adults. A report on recommendations of the Task Force on Community Preventive Services. MMWR 1999;48(No.RR–8):1–15.

d. CDC. Hepatitis B virus: a comprehensive strategy for eliminating transmission in the United States through universal childhood vaccination. MMWR 1991;40(No.RR–13): 1–17.

e. CDC. Immunization of adolescents: recommendations of the ACIP, the AAP, the AAFP, and the AMA. MMWR 1996;45[No.RR–13]

f. CDC. Immunization of health-care workers: recommendations of the ACIP and the HICPAC. MMWR 1997;46[No.RR–18].

4. Identify strategies to integrate educational health messages and materials into information and programs for target audiences which include individuals at risk for or infected with hepatitis A virus (HAV), HCV, or hepatitis B virus (HBV), health care professionals and advocacy groups who provide services for these persons, and the general public. Recipient may network with other organizations or groups (professional, voluntary, governmental, community-based) that work with minority populations with high rates of viral hepatitis or groups/populations at high risk of specific types of viral hepatitis (e.g. American Social Health Association [ASHA], National Hispanic Medical Association [NHMA], National Council of Black Churches, Indian Health Service, and others).

5. Develop and implement protocols to evaluate the success of health messages and materials in (1) reaching target audiences, (2) increasing knowledge of viral hepatitis in target populations, and (3) increasing behaviors for prevention and control of viral hepatitis among target populations. The latter should include (a) increasing the number of persons at risk for viral hepatitis who seek and accept recommended testing, vaccination, counseling, and medical evaluation, if appropriate, and (b) increasing the number of health professionals or educators who offer accurate and appropriate information and prevention and control services such as testing, counseling, vaccination, and medical referral to persons at risk for or infected with viral hepatitis.

6. Routinely share results of needs assessment, materials testing, integration of materials, evaluation plans and other activities with other organizations receiving CDC funds under this cooperative agreement.

7. Attend and participate in an annual meeting of project managers, to plan and present program activities and evaluate activities.

Part B. Develop, Implement, and Evaluate Training of Health Professionals

Recipient Activities

1. Identify training needs and gaps in existing training programs for health professionals who provide services for persons with, or at risk for, viral hepatitis, including physicians, nurses, physician assistants and other health professionals, as well as health professionals in training (e.g., medical, nursing students). This should include review of existing literature or survey results of target audiences, as well as collecting additional needs assessment information from targeted groups, through focus groups or surveys, as necessary;

2. Develop and implement training modules, materials, mechanisms, and programs, especially those that can be integrated into existing or ongoing training programs, for health professionals and organizations that will fill identified needs. This may be done through collaboration with other organizations or groups (professional, voluntary, governmental, community-based) that represent health professionals that provide services for minority populations with high rates of viral hepatitis or groups/populations at high risk of specific types of viral hepatitis (e.g. National Hispanic Medical Association [NHMA], National Medical Association [NMA]); training materials should incorporate accurate information for viral hepatitis, which are consistent with published CDC guidelines on prevention and control of hepatitis A, B, and C (see references pp. 5–6). Develop and implement protocols to evaluate the success of materials, training instruments and programs in (1) increasing knowledge of viral hepatitis among targeted groups of health professionals, and (2) increasing the number of health professionals and organizations that offer persons at risk for viral hepatitis preventive services (including education, testing, vaccination, counseling, and medical evaluation, if appropriate).

3. Share schedules of events and activities with CDC and other organizations receiving funds under this cooperative agreement.

4. Attend and participate in an annual meeting of project managers, to plan, present, and evaluate program activities.

CDC Activities

1. Upon request, provide scientific and public health consultation and assistance in the development of training materials and protocols related to the cooperative agreement;

2. Upon request, provide consultation and technical assistance regarding implementation of training protocols;

3. Upon request, provide technical assistance in developing evaluation plan and conducting and interpreting evaluation of training programs;

4. Assist in reporting and validating relevant information concerning viral hepatitis made available to Federal, State, local health agencies, health care professionals, and volunteer organizations; and

5. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Letter of Intent (LOI)

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at least thirty (30) days prior to the application due date. Notification should include: (1) name and address of institution, (2) name, address, and telephone number of contact person, and (3) which section (part A, B, or both) you will apply for. Notification should be provided by facsimile, postal mail, or E-mail, to Gladys T. Gissentanna, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30342–4146, E-mail address: gcg4@cdc.gov, Facsimile (770) 488–2777.

Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced, numbered pages (including budget, excluding appendices), printed on one side, with one inch margins, and unreduced font. A detailed index to application contents, including appendices, as well as a 2-page executive summary should be included at the front of the application (included in the 20-page limit).

F. Submission and Deadline

Letter of Intent (LOI)

The letter of intent should be submitted on or before May 15, 2000, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: www.cdc.gov/...Forms. On or before June 15, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received prior to submission to the review panel for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Each applicant will be evaluated only on the part of the application to which they are applying: part A, B, or both, with total score of 100 for each section.

1. Background and understanding (10 points)

Extent to which the applicant demonstrates a clear understanding of the subject area and responds to the purpose and objectives of this cooperative agreement, including collaboration in all aspects of the agreement with CDC program staff and other cooperative agreement recipients.

2. Capacity (45 points)

Extent to which the applicant provides evidence of adequate resources, facilities, experience (both technical and administrative), and access to target audiences for

conducting the project. This should include:

a. documentation that professional personnel involved are qualified and have past successful experience and achievements related to the proposed activities; this can include experience of either direct or collaborating personnel in providing viral hepatitis or other communicable disease (e.g., HIV) education and/or training in prevention and control activities. (10 points)

b. inclusion of original letters of support from appropriate non-applicant organizations, individuals, institutions, academic institutions, public health departments, etc. needed to carry out proposed activities and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan. (10 points)

c. Evidence of past success in developing, testing, and disseminating health education materials, messages, or training programs. (10 points)

d. Extent of demonstrated experience in areas of viral hepatitis or other blood-borne virus prevention and control, education, or training, and demonstrated success in developing, disseminating, and evaluating the impact of educational materials, messages, and programs in disease prevention/health promotion at different levels (e.g., community, high risk populations, minority populations, patients, health care professionals). Extent of demonstrated access to target populations, and successful collaborations with a variety of organizations, government, private, non-profit, academic, and evidence of existing quality assurance mechanisms to ensure appropriate and culturally sensitive health educational and training services as recommended for the proposed audiences (e.g., health care professionals, high risk groups and settings), as well as access to proposed audiences. (15 points).

3. Objectives and Technical Approach (45 points)

a. Extent to which the applicant describes objectives of the proposed project which are (1) consistent with the purpose and goals of this cooperative agreement program, (2) measurable and time-phased and (3) consistent with published CDC guidelines on prevention and control of hepatitis A, B, and C (see MMWR references cited in the Part A Recipient Activities part of this document). (10 points)

b. Extent and quality of detailed operational plan proposed for designing, implementing, and evaluating the program, which clearly and appropriately addresses all ''Recipient Activities'' in the application, and are appropriate and adequate to accomplish the objectives of the program. These activities will be scored in three categories:

(1) Identification of gaps in existing materials and programs and needs assessment. (10 points)

(2) Testing and implementation/dissemination of materials and/or programs. (5 points)

(3) Evaluation including methods and instruments for evaluating progress in determining needs, testing of educational materials, messages, and training, dissemination, implementation, and outcome evaluation. (5 points)

c. Extent to which the applicant clearly identifies specific assigned responsibilities of all key professional personnel, and describes collaboration with CDC and other partners, including other recipients of funds under this cooperative agreement during various phases of the project. (5 points)

d. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed program. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Budget (not scored)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds.

a. Submit line-item itemized budget with narrative justification for personnel, travel, supplies, laboratory testing, and other services related to the project;

b. For contracts, include the name of the person or firm to receive the contract, the method of selection, the period of performance, method of accountability, and a description of the contracted service requested;

c. Funding levels for years two and three should be estimated.

5. Human Subjects (not scored) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress reports (semiannual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(1) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 241(a), 247b(k)(1) and 247(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, 00047.

See also the Centers for Disease Control and Prevention Internet Website http://www.cdc.gov and the Program and Grants Office Website for additional funding opportunities and electronic versions of all necessary forms www.cdc.gov/...forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road,

Atlanta, GA 30341–4146, Telephone number (770) 488–2753, E-mail address gcg4@cdc.gov.

For program technical assistance, contact: Linda Moyer, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Road, NE, M/S G–37, Atlanta, GA 30333, Telephone: (404) 371–5460, E-mail address: lam1@cdc.gov.

Dated: April 26, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10877 Filed 5–1–00; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 00056]

Development and Testing of New Antimalarial Drugs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the Development and Testing of New Antimalarial Drugs. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of ''Healthy People 2010'', visit the internet site http://www.health.gov/healthypeople.

The purpose of this program is to support research projects to develop and test new antimalarial drugs. Projects may include, but not be limited to a range of activities such as identifying promising agents, purifying or creating them, optimizing them for clinical use, and testing them in in vitro and in vivo systems. Applications may include components to develop national centers of excellence that would serve as national repositories of expertise and experience. For example, an application to establish a national center of excellence for computer-assisted drug design for malaria and for screening potential candidate drugs could be considered. This might include high throughput testing of potential antimalarial compounds. Second and third year plans may include clinical trials.

B. Eligible Applicants

Assistance will be provided only to the University of Mississippi. No other applications are solicited.

The FY 2000 United States Senate Labor-Health and Human Services Appropriations Report: Report 106–166 (S 1650), recognized the unique qualifications of the consortium of the University of Mississippi Laboratory for Applied Drug Design and Synthesis and the Tulane University Center for Infectious Diseases for carrying out the activities specified in this cooperative agreement.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $5,000,000 is available in FY 2000 to fund one award. It is expected the award will begin on or about August 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for conducting activities under 2. (CDC Activities):

1. Recipient Activities

a. Develop and implement strategies for acquiring or developing new antimalarial compounds. This may include the use of natural products, computer-aided drug design, and development of analogs of known drugs.

b. Develop and implement a rational approach to selecting promising drug candidates.

c. Develop strategies and capacity to produce adequate quantities of compound, for example, by using an automated organic synthesizer or other technology.

d. Develop and implement a systematic approach to in vitro testing of drug candidates. Develop and evaluate in vitro systems for drug testing where results allow prediction of the risk of development of in vivo resistance and the rate at which resistance is likely to develop.

e. Conduct in vivo testing of promising candidates, including the use of primate models.

f. Develop a plan for enhancing commercial interest in promising drugs.

g. Disseminate results of research.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Provide selected laboratory tests, as necessary or appropriate.

c. Provide biological materials (e.g., strains, reagents, etc.) as necessary or appropriate.

d. Upon request, assist in the development of assays for evaluating pharmacokinetics of new antimalarial drugs.

e. Upon request, provide in vitro testing for P. vivax, as well as in vivo testing for malaria parasites.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages printed on one side, with one inch margins and unreduced font.

F. Submission and Deadline

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before June 1, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' Section of this announcement.

G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

Extent to which applicant demonstrates a clear understanding of the background, purpose, and objectives of the focus area being addressed. Extent to which applicant demonstrates that the proposed project addresses the purpose. Extent to which the applicant demonstrates that the proposed program collaborates with and does not duplicate existing rational development efforts.

2. Capacity (45 points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from participating non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (45 points total)

a. Extent to which applicant describes measurable and time-phased objectives of the proposed project which are consistent with the purpose of the focus area being addressed. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities for the specific programmatic focus area being addressed. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are feasible, appropriate, and adequate to accomplish the objectives.

Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant clearly describes collaboration with CDC and/or others during various phases of the project. (25 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

d. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

6. Animal Subjects (not scored)

Does the application adequately address the requirements of PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress reports (semiannual);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(1)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(1)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC Homepage Internet address-http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

To obtain additional information, contact: Gladys T. Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770–488–2753, Email address gcg4@cdc.gov

For program technical assistance, contact: John W. Barnwell, Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 4770 Buford Highway, N.E., Atlanta, GA 30333, Telephone number 770–488–4528, Email address wzb3@cdc.gov

Dated: April 26, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–10878 Filed 5–1–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1246]

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Safety Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of

information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey about food safety.

DATES: Submit written comments on the collection of information by July 3, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Safety Survey (OMB Control Number 0910–0345)—Extension

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct a consumer survey about food safety under this authority. The food safety survey will provide information about consumers' food safety awareness, knowledge, concerns, and practices. A nationally representative sample of 2,000 adults in households with telephones and cooking facilities will be selected at random and interviewed by telephone. Participation will be voluntary. Detailed information will be obtained about risk perception, perceived sources of food contamination, knowledge of particular microorganisms, safe care label use, food handling practices, consumption of raw foods from animals, information sources, and perceived foodborne illness and food allergy experience.

Most of the questions to be asked are identical to ones asked in the 1998 Food Safety Survey. Because of recent national consumer education campaigns about food safety and the large amount of media attention to food safety issues in the past few years, consumer attitudes, knowledge, and practices are likely to have changed greatly since the 1998 survey. FDA needs current information to support consumer education programs and regulatory development. In addition, FDA needs information from the consumer perspective on several new areas related to food safety. New areas include attitudes toward genetically modified foods, irradiated foods, and organically grown foods; handling of leftovers and foods associated with *listeria monocytogenes* contamination; washing practices for fresh fruits and vegetables; reaction to warning statements on unpasteurized juice and to handling statements on eggs; disability status; and perceived food allergy.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
2,000	1	2,000	.5	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with the 1998 survey mentioned in the previous paragraph.

Dated: April 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–10839 Filed 5–1–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2117–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Removal of Exemption of Laboratories in the State of Oregon

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice removes the Clinical Laboratory Improvement Amendments of 1988 (CLIA) exemption previously granted to laboratories within the State of Oregon. Section 353(p) of the Public Health Service Act grants us the authority to exempt from CLIA clinical laboratories located in a State that enacts and implements laws with requirements equal to or more stringent than the CLIA requirements.

EFFECTIVE DATE: The provisions of this notice are effective on May 2, 2000.

FOR FURTHER INFORMATION CALL: Judith Yost, (410) 786–3531.

SUPPLEMENTARY INFORMATION:

I. Background

Section 353 of the Public Health Service Act (PHSA), as amended by the Clinical Laboratory Improvement Act of 1988 (CLIA), requires laboratories that perform tests on human specimens to meet the requirements we establish. Laboratories that also request to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHSA, as stipulated in section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. Subject to specific exceptions, laboratories must have a current and valid CLIA certificate to test human specimens to receive payment from the Medicare or Medicaid programs. Regulations implementing section 353 of the PHSA are contained in 42 CFR part 493 (Laboratory Requirements).

Section 353(p) of the PHSA authorizes us to exempt from the CLIA requirements laboratories located in a State that applies laboratory licensure requirements equal to or more stringent than those of CLIA. Part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) implements section 353(p) of the PHSA.

Section 493.553 sets forth the information that must be submitted with a State licensure program's application for CLIA approved status. Sections 493.551 and 493.553 provide that we may exempt from CLIA requirements, for a period not to exceed 6 years, State licensed or approved laboratories in a State if the State licensure program meets specific conditions. After that time, the State must re-apply to us for continued exemption. Section 493.575(f) provides that we will publish a notice in the **Federal Register** containing justification for removing the CLIA approved status of a State licensure program.

II. CLIA Exemption of Licensed Oregon State Laboratories

The State of Oregon's period of exemption began on June 13, 1996, with the publication of our notice entitled, ''Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Laboratories in the State of Oregon,'' in the **Federal Register** (61 FR 30072). That exemption period expired December 31, 1999. The State of Oregon has formally notified us that it will not be re-applying for exemption of its licensed laboratories located within the State. Without an application for continued approval of Oregon's licensure program, we cannot continue to exempt Oregon laboratories from the CLIA requirement.

III. Removal of CLIA Approval of the State of Oregon's Laboratory Licensure Program

The nearly 4½-year exemption period that we granted to laboratories in the State of Oregon expired on December 31, 1999. Therefore, we are removing the CLIA approved status of Oregon's licensure program effective May 2, 2000.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: March 3, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–10882 Filed 5–1–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1134–N]

Medicare Program; Open Public Meeting on May 18, 2000 to Discuss the Coverage of Drugs and Biologicals that Cannot be Self-Administered

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting to obtain input on the Medicare program policy for drugs and biologicals which cannot be self-administered and are furnished as an incident to a physician's professional service. The meeting will provide an opportunity for providers, suppliers, beneficiaries, beneficiary advocates, and other interested parties to furnish information and raise issues about the program's policy concerning the self-administration of drugs and biologicals.

DATES: The meeting is scheduled for May 18, 2000 from 9:30 a.m. until 3:30 p.m.

ADDRESSES: The meeting will be held at the Health Care Financing Administration headquarters, in the auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Heidi Adams, (410) 786–1620.

SUPPLEMENTARY INFORMATION:

Background

As suggested by the report language accompanying section 219 of the Department of Health and Human Services Appropriations Act, 2000 (Public Law 106–113), we are announcing the first of two ''town hall'' meetings to discuss our current policy regarding Medicare coverage of drugs and biologicals which cannot be self-administered and are furnished as an incident to a physician's professional service.

The purpose of the May 18th meeting is to obtain focused input on how this statutory provision should reasonably be interpreted; how the evolution of medical technology has affected physician practice in self-administration; how different interpretations of the provision might affect considerations of fairness and equity among beneficiary populations; and how physician practice may be affected by different interpretations. Due to time constraints and the need to focus on the above topics, the agency is unable to undertake a discussion of options or ideas that require a statutory change.

The format of the meeting will include an introduction and opening statements by the administration, followed by 15-minute presentations by panel members. These statements will discuss the historical development of the ''self-administered'' issue and will examine the current policy and information that has been gathered on the issue. Following the short presentations, the meeting will move to an open dialogue.

Individuals interested in making a presentation at the meeting or who need special arrangements should contact Heidi Adams at (410) 786–1620 or via e-mail at HAdams@hcfa.gov no later than May 7, 2000. Individuals should identify the topics they wish to discuss during their presentation. Because of time constraints, only a limited number of individuals will be able to make presentations. In an effort to assure that all viewpoints are represented, we will notify participants who are selected to make a presentation. We will not assign presentation times until after May 7, 2000.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below.

Registration

The Center for Health Plans and Providers will handle registration for the meeting. Individuals may register by sending a fax to the attention of Heidi Adams at (410) 786–0169. At the time of registration, please provide your name, address, telephone number, company name and fax number.

Receipt of your fax will constitute confirmation of your registration.

Meeting materials will be provided at the time of the meeting.

If you have questions regarding registration, please contact Heidi Adams. We will accept written comments, questions, or other materials specifically dealing with the issue that are received no later than 5 p.m. on May 7, 2000. Written submissions must be sent to: Health Care Financing Administration, ATTN: Heidi Adams, C4–07–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 26, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–10883 Filed 5–1–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Clarification—Fiscal Year (FY) 2000 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Clarification of a Notice of Funding Availability Regarding the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) PRC Implementation Program Funding Announcement.

SUMMARY: This notice is to inform the public that a statement in the SAMHSA/CSAT Guidance for Applicants No. TI 00–004 entitled, Cooperative Agreement to Bridge the Gap: Phase II Implementation of Community-Based Practice/Research Collaboratives (Short Title: PRC Implementation Program) has been clarified. The Notice of Funding Availability for the PRC Implementation Program was published in the **Federal Register** on March 28, 2000 (65 FR 16401–16403).

A sentence in the last paragraph of Section II—Program Description, subsection 3, Pilot and Knowledge Application Evaluation Studies, has been clarified by adding the words ''per year.'' The revised sentence reads: ''No single Knowledge Application Evaluation Study should exceed $75,000 in direct costs per year.'' The full Guidance for Applicants is available via the SAMHSA web site—www.samhsa.gov, or from the National Clearinghouse for Alcohol and Drug Information (Telephone: 800–729–6686).

Questions concerning the clarification or other program issues may be directed to: Frances Cotter, Project Director, Office of Managed Care, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–8796.

Dated: April 24, 2000.

Richard Kopanda,

Executive Office, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–10838 Filed 5–1–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Working Groups of the Invasive Species Advisory Committee

AGENCY: Office of the Secretary, DOI.

ACTION: Establishment.

SUMMARY: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463). Pursuant to Executive Order 13112, the National Invasive Species Council (Council) on behalf of the Invasive Species Advisory Committee (ISAC) is establishing working groups to assist preparation of a National Invasive Species Management Plan (Management Plan) and ongoing stakeholder input to assist ISAC and Council activities.

SUPPLEMENTARY INFORMATION:

Working Groups—Scope and Objectives

The purpose of the working groups is to provide the ISAC and the Council advice on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. Six working groups have been established as follows:

1. Communication, Outreach, and Education
2. International Activities and Cooperation
3. Policy and Regulation
4. Research, Information Sharing, Documentation and Monitoring
5. Risk Analysis and Prevention
6. Management (Control and Restoration)

The working groups will help maintain a regular dialogue with stakeholders to provide national leadership regarding invasive species issues. They will assist the ISAC and the Council to (1) Prepare and issue a Management Plan; (2) encourage planning and action at local, tribal, State, regional and ecosystem-based levels to achieve the goals and objectives of the management plan; (3) develop recommendations for international cooperation in addressing invasive species; (4) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on invasive species matters; (5) facilitate development of a coordinated network to document, evaluate, and monitor impacts from invasive species; (6) facilitate establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet; and (7) support long-term continuance and effective implementation of the Management Plan.

Working groups have been organized with federal and non-federal co-leaders. The groups will utilize electronic communications (email, listservers, and web-based postings) to accelerate development of Management Plan input. The vision or scoping statements developed by each working group will reflect a more specific refinement of the draft guiding principles now under development by the ISAC. Priority issues will be identified and the groups will develop draft responses or actions to be taken for consideration by the ISAC. As part of the management planning process, model projects will be identified which improve coordination and effectiveness and stimulate action.

The working groups will report to the ISAC at least twice before the Management Plan is due to be completed in August, 2000. After issuance of the plan, the working groups will help implement the plan and begin developing input for its biennial revision.

Members of the working groups serve without pay.

FOR FURTHER INFORMATION CONTACT: Kelsey Passe, National Invasive Species Council Program Analyst, Department of the Interior; Email: kelsey_passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526.

Dated: April 26, 2000.

William Y. Brown,

Science Advisor to the Secretary.

[FR Doc. 00–10868 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–09–0777–42]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the West Mojave Management Planning area on Friday, June 9, 2000, from 7:30 a.m to 4 p.m., and meet in formal session on Saturday, June 10, from 8 a.m. to 5 p.m. The Saturday meeting will be held at the Kerr-McGee Center, located at 100 West California Avenue, Ridgecrest, California.

The Council and interested members of the public will assemble for the field tour at the Best Western China Lake Inn parking lot at 7:15 a.m. and depart at 7:30 a.m. Tour stops will include the Desert Tortoise Natural Area, the Rand Mountains, and the Jawbone Canyon Off-Highway Vehicle Recreation Area. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Council will meet in formal session on Saturday. Discussions will focus on issues being addressed in the West Mojave Coordinated Management Plan. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez at (909) 697–5220, BLM California Desert District External Affairs.

Dated: April 26, 2000.

Tim Salt,

District Manager.

[FR Doc. 00–10873 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0041).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the OMB for review and approval. We are also inviting your comments on this ICR.

DATE: Submit written comments by July 3, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0041), 725 17th Street, N.W., Washington, D.C. 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart K, Production Rates.

OMB Control Number: 1010–0041.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1334(g)(2) states ". . . the lessee shall produce such oil or gas, or both, at rates . . . to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan."

Regulations at 30 CFR 250, subpart K, implement these statutory requirements. We use the information collected to determine if produced gas can be economically put to beneficial use, to analyze the risks of transporting the liquid hydrocarbons against the value of the resource, and to account for volumes of flared gas and burned liquid hydrocarbons. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Specifically, MMS uses the information to review records of burning liquid hydrocarbons and venting and flaring actions to ensure that they are not excessive; to determine maximum production and maximum efficient rates; to compare the volume of hydrogen sulfide (H_2S) flared and the sulphur dioxide (SO_2) emitted to the specified amounts in approved contingency plans; to monitor monthly atmospheric emissions of SO_2 for air quality; to review applications for downhole commingling to ensure that action does not result in harm to ultimate recovery or undervalued royalties.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on November 18, 1999 (64 FR 63053).

Frequency: On occasion or monthly.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 14,189 burden hours, averaging approximately 110 hours per respondent. Refer to the following chart.

Citation 30 CFR 250 Subpart K	Reporting & recordkeeping requirement	Number	Burden (hours)	Annual burden hours
1101(b)	Request approval to produce within 500 feet of a lease line.	21 requests	5	105
1101(c)	Request approval to produce gas cap of a sensitive reservoir.	46 requests	12	552
1102	Submit forms MMS–126, MMS–127, and MMS–128	Burden covered under 1010–0038, 1010–0018, and 1010–0017.		0
1102(a)(5)	Submit alternative plan for overproduction status	We are not currently collecting this information.		0
1102(b)(6)	Request extension of time to submit results of semi-annual well test.	36 requests	.5	18
1103(a)	Request approval of test periods of less than 4 hours and pretest stabilization periods of less than 6 hours.	36 requests	.5	18
1103(c)	Provide advance notice of time and date of well tests	10 notices	.5	5
1104(c)	Submit results of all static bottomhole pressure surveys obtained by lessee. Information submitted on form MMS–140 in GOMR.	1,200 surveys	1	1,200
1105(a), (b)	Request special approval to flare or vent oil-well gas	27 requests	6	162
1105(c)	Request approval to burn produced liquid hydrocarbons.	60 requests	1	60
1105(f)	Submit monthly reports of flared or vented gas containing H_2S.	18 operators × 12 mos. = 216.	2	432
1105(f)	H_2S Contingency, Exploration, or Development and Production Plans.	Burden covered under 1010–0053 and 1010–0049.		0
1106	Submit application to commingle hydrocarbons produced from multiple reservoirs and inform other lessees having an interest.	91 applications	6	546
1107(b)	Submit proposed plan for enhanced recovery operations.	21 plans	12	252
1107(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced.	55 reports	2	110
Reporting subtotal		1,819 responses		3,460
1105(d), (e)	Maintain records for 2 years detailing gas flaring or venting..	823 platforms	13	10,699
1105(d), (e)	Maintain records for 2 years detailing liquid hydrocarbon burning.	60 occurrences	.5	30
Recordkeeping subtotal		130 Recordkeepers		10,729
Total burden		1,949 Responses		14,189

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . . .'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 3, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 16, 2000.

Elmer P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–10711 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for

OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
BHP Petroleum (GOM) Inc., Exploration Activity, SEA No. N–6626.	Walker Ridge Area, Blocks 425 and 469, Lease OCS–G 16987 and 16997, 146 miles from the nearest Louisiana shoreline.	02/03/00
Coastal Oil and Gas Corporation, Exploration Activity, SEA No. N–6640.	High Island Area, East Addition, South Extension, Block A–367, Lease OCS–G 15820, 118 miles from the nearest Louisiana shoreline.	02/29/00
Apache Corporation, Exploration Activity, SEA No. S–5175	South Pass Area, Block 62, Lease OCS–G 1294, 18 miles south of Venice, Louisiana.	04/12/00
Vastar Resoures, Inc., Pipeline Activity, SEA No. P–12395 (G–21475).	Main Pass Area, South and East Addition, Blocks 264, 263, and 280, Lease OCS–G 21475, 70 miles off the coast of Alabama.	02/02/00
Unocal Corporation, Structure Removal Operations, SEA No. ES/SR 93–143A.	Main Pass Area, Block 254, Lease OCS–G 5055, 60 miles from Baldwin County, Alabama.	04/06/00
Exxon Mobil Production Company, Structure Removal Operations, SEA No. ES/SR 00–001.	Grand Isle Area, Block 23, Lease OCS–G 0034, 7 miles southeast of Lafourche Parish, Louisiana.	01/28/00
EEX Corporation, Structure Removal Operations, SEA No. ES/SR 00–002.	Garden Banks Area, Block 387, Lease OCS–G 7485, 129 miles south of Vermilion Parish, Louisiana.	01/18/00
Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 00–003 and 00–004.	High Island Area, Block A–549, Lease OCS–G 12584; East Cameron Area, Block 311, Lease OCS–G 6646; 93 to 98 miles from the nearest Louisiana shoreline.	01/31/00
Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 00–005.	Mustang Island Area, Block 738, Lease OCS–G 11214, 26 miles southeast of Aransas County, Texas.	02/04/00
Chevron U.S.A., Production Company, Structure Removal Activity, SEA No. ES/SR 00–006.	Main Pass Area, Block 132, Lease OCS–G 2949, 25 miles east of Plaquemines Parish, Louisiana.	02/09/00
CXY Energy Inc., Structure Removal Activity, SEA No. ES/SR 00–007.	Main Pass Area, Block 262, Lease OCS–G 15390, 51 miles east of Plaquemines Parish, Louisiana.	03/01/00
Energy Resources Technology, Inc., Structure Removal Activity, SEA No. ES/SR 00–008.	East Cameron Area, Block 223, Lease OCS–G 10632, 67 miles south of Cameron Parish, Louisiana.	03/01/00
Newfield Exploration Company, Structure Removal Activity, EA Nos. ES/SR 00–009, through 00–13.	Eugene Island Area, Block 199, Lease OCS–G 0437; West Cameron Area, Blocks 401 and 421, Leases OCS–G 5322 and 7619; 48 to 70 miles off the Louisiana coast.	03/14/00
Chevron U.S.A. Production Company, Structure Removal Activity, SEA Nos. ES/SR 00–014 through 00–016.	Grand Isle Area, Blocks 26 and 37, Leases OCS–G 0392 and 0390, 6 to 7 miles off the Louisiana coast.	03/10/00
Torch Operating Company, Structure Removal Activity, SEA No. ES/SR 00–017.	Main Pass Area, Blocks 99, Lease OCS–G 6807, 15 miles east of Plaquemines Parish, Louisiana.	03/10/00
NCX Company, Inc., Structure Removal Activity, SEA No. ES/SR No. 00–018.	Chandeleur Area, Block 21, Lease OCS–G 13040, 16 miles east of St. Bernard Parish, Louisiana.	03/29/00
Aviara Energy Corporation, Structure Removal Activity, SEA No. ES/SR No. 00–019.	West Cameron Area, Block 531, Lease OCS-G 2223, 87 miles south of Cameron Parish, Louisiana.	03/28/00
Forest Oil Corporation, Structure Removal Activity, SEA Nos. ES/SR Nos. 00–020 through 00–23.	Eugene Island Area, Block 292, Lease OCS–G 0994; Vermilion Area, Blocks 101 and 102, Leases OCS–G 10658 and OCS–G 3393; 224 miles south of St. Mary Parish, Louisiana and 90 to 95 miles south of Vermilion Parish, Louisiana.	04/13/00
EOG Resources, Inc., Structure Removal Activity, SEA No. ES/SR 00–024.	West Cameron Area. Block 491, Lease OCS–G 9425, 87 miles south of Cameron Parish, Louisiana.	03/30/00
PennzEnergy Exploration and Ship Production, L.L.C., Structure Removal Activity, SEA No. ES/SR 00–025.	Shoal Area, Block 154, Lease OCS–G 0420, 31 miles south of Terrebonne, Parish, Louisiana.	04/03/00
Texaco Inc., Structure Removal Actiovity, SEA No. ES/SR 00–026.	Vermilion Area, Block 30, Lease OCS–G 4785, 6 miles south of Vermilion Parish, Louisiana.	04/03/00
Burlington Resources Offshore Inc., Structure Removal Activity, SEA Nos. ES/SR 00–27 through 00–31.	Eugene Island Area, Block 159, Lease OCS–G 4449; Vermilion Area, Blocks 226 and 237, Leases OCS–G 5195 and 6677; West Cameron Area, Block 605 Lease OCS–G 2231; 37 to 110 miles off the Louisiana coast.	04/06/00
Houston Exploration Company, Structure Removal Activity, SEA No. ES/SR No. 00–032.	Matagorda Island Area, Block 650, Lease OCS–G 8998, 23 miles southeast of Calhoun County, Texas.	04/05/00
Union Pacific Resources Company, Structure Removal Activity, SEA Nos. ES/SR 00–033 and 00–034.	Ship Shoal Area, Block 191, Lease OCS–G 5555; Vermilion Area, Block 216, Lease OCS–G 13885; 32 to 58 miles off the Louisiana coast.	04/07/00
Forcenergy Inc., Structure Removal Activity, SEA Nos. ES/SR 00–035 through 00–037.	East Cameron Area; Blocks 297, 282, and 283; Leases OCS–G 7663, 7661, and 7660; 93 to 98 miles offshore the Louisiana coast.	04/11/00
Forcenergy Inc., Structure Removal Activity, SEA Nos. ES/SR 00–039 and 00–040.	West Cameron Area, Block 212, Lease OCS–G 4758, 38 miles south of Cameron Parish, Louisiana.	04/11/00

Activity/operator	Location	Date
Chevron U.S.A. Inc., Structure Removal Activity, SEA No. ES/SR 00–041.	West Delta Area, Block 29, Lease OCS–G 0385, 7 miles south of Plaquemines Parish, Louisiana.	04/06/00
Apache Corporation, Structure Removal Activity, SEA No. ES/SR 00–042.	Vermilion Area, Block 257, Lease OCS–G 8671, 70 miles south of Vermilion Parish, Louisiana.	04/14/00

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: April 25, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–10879 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Submission to the Office of Management and Budget, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to Office of Management and Budget and request for comments on information collection related to National Park Service mining regulations.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)(D)), the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension, with revision, to a currently approved information budget for the NPS's minerals management regulatory program inside park units. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the park protection functions of the NPS, including whether the information has practical utility; (2) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including use of automated, electronic, mechanical or other forms of information technology; and (5) on the typical costs that prospective operators incur in preparing complete plans of operation under NPS mining regulations. OMB has up to 60 days to approve or disapprove the requested information collection budget but may respond after 30 days. Thus, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Primary Purpose of the Proposed Information Collection Request

The NPS requires the submittal of information on prospective mineral development activities associated with mining claims and non-Federal oil and gas rights within National Park System units to ensure that only operations that mitigate adverse impacts to park resources and values are permitted to operate in parks.

DATES: Public comments on this notice must be received by June 1, 2000.

ADDRESSES: Please send comments to OMB, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department (1024–0064), Washington, D.C. 20503. Please also forward a copy of your comments to Carol McCoy, Chief, Policy and Regulations Branch, Geologic Resources Division, NPS, P.O. Box 25287, Lakewood, Colorado 80225.

All comments will become a matter of public record. Copies of the information collection request may be obtained by contacting Carol McCoy at the above noted address or by calling her at (303) 969–2096.

SUPPLEMENTARY INFORMATION:

Title: NPS Minerals Management Program.

Form: None.

OMB Number: 1024–0064.

Expiration Date: April 2000.

Type of Request: Extension and revision of a currently approved information collection.

Description of Need: While surprising, outstanding mineral rights exist in many units of the National Park System. In most cases, these rights predate the establishment of the units. Currently, a little over 2,000 mining claims, which were located under the 1872 Mining Law, exist in a total of 20 park units. The majority of these claims are located in Mojave National Preserve that was added to the National Park System through the California Desert Protection Act of 1994 (16 U.S.C. 410aaa). With respect to non-Federal oil and gas rights in park units, 597 non-Federal oil and gas operations exist in 11 park units. The potential for additional non-Federal oil and gas operations in additional units is tied to market forces and the quality and quantity of oil and gas reserves in park boundaries that coincide with the presence of private rights.

The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR Part 9, Subpart A for mining claims (i.e., ''9A regulations''), and Subpart B for non-Federal oil and gas rights (i.e., ''9B regulations''). The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS did so under congressional authority granted under the Mining in the Parks Act of 1976 (16 U.S.C. 1901 *et seq.*) and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916 as amended (16 U.S.C. 1 *et seq.*) and

individual enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries.

The heart of the regulations is the approved ''plan of operations'' requirement. Essentially, a plan of operations is a prospective operator's blueprint setting forth all intended activities from access to extraction to reclamation related to developing a particular mineral right in a given park unit. The information required in a plan of operations is set forth in NPS regulations. Before an operator can commence development activities in a park unit, the NPS must approve the plan of operations and the operator must secure a bond in an amount sufficient to cover the cost of reclamation to the Federal Government in the event the operator defaults on his/her obligations.

Usually, an approved plan of operations covers the life of the mine or well, from development and production to reclamation. Under NPS regulations, such plans may be revised. No set form is required for a plan of operations. Each plan is tailored to the intended activities of an operator and the particulars of the environment, e.g., hardwood forest or desert, presence of endangered species or cultural resources, location and extent of water resources including wetlands.

Because of the variability among plans of operations and the duration of such plans, assessing the annual paperwork burden of complying with the NPS's mining regulations is difficult. Below is the NPS's best estimate, pro-rated on an annual basis, as to the number of respondents and number of hours involved in complying with the Service's regulations governing mining claims and non-Federal oil and gas rights.

Respondents: ⅓ medium to large publicly owned companies and ⅔ private entities.

Estimate of Number of Respondents: On an annual basis, the NPS estimates that it receives a range of between 15 to 30 plans of operations under its regulations: 5 to 10 plans of operations for mining claims, and 10 to 20 plans of operations for non-Federal oil and gas rights. For analysis purposes, the NPS used an overall estimate of 23 plans of operations per year: 8 plans of operations for mining claims, and 15 plans of operations for non-Federal oil and gas rights.

Estimated Number of Responses per Respondent: One. To conduct mineral development operations in park units, a prospective operator must submit a proposed plan of operations to the NPS for review and approval. Once approved, such a plan covers the life of the operation. If the plan is for geophysical work associated with private oil and gas rights it may only cover a period of a few months. In contrast, a plan for a production oil and gas well or a hardrock mine may cover a period of 10 or more years.

Estimate of Burden Per Respondent: Public reporting burden for this collection of information is estimated to average 176 hours per response.

Estimated Total Annual Burden: 4048 hours. This number breaks down to 1408 total hours to comply with the information requirements of the 9A regulations governing mining claim operations in parks, and 2650 total hours to comply with the information requirements of the 9B regulations governing non-Federal oil and gas operations in parks.

Methodology and Assumptions Underlying the Hour Estimate: Under the Service's 9A regulations and the 9B regulations, a complete plan may consist of 10 pages of text plus 2–10 pages of illustrations inclusive of location maps, site plans and cross-sections to 100 pages of text plus several volumes of supporting material depending on the complexity of the proposed operations. The latter type of plan for hardrock mining is a rarity in the NPS. The time to prepare a plan could range from 24 hours to 6 months for a very complicated plan. Because the content of each plan is specific to the operation and site, and each operation and site present a unique set of circumstances, it is difficult to identify an ''average'' plan on which to base an estimate of preparation time. The NPS thus chose to use 160 hours (4 weeks) plus 10% for purposes of this analysis. In the case of the 9A regulations where an average of 8 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 1408 hours (*i.e.,* 760 hours x 8 complete proposed plans). In the case of the 9B regulations where an average of 15 complete proposed plans are expected per year, the estimated total amount of time involved to prepare plans of operations is 2640 hours.

Estimated Cost Per Respondent to Comply with the Paperwork Requirements: The NPS estimates that the annualized cost to all respondents to comply with the 9A regulations ranges from $14,080 to $140,800. The NPS estimated the cost per plan at $1,760 to $17,600. In the case of the 9B regulations, the NPS estimates the annualized cost to all respondents ranges from $75,000 to $225,000 based on a likely individual compliance cost range of $5,000 to $15,000.

Methodology and Assumptions Underlying the Cost Estimate: For the 9A regulations, the annualized estimated cost to all the respondents was determined as follows:

(1) Nationwide, 8 plans of operations and associated information (e.g., bond, commercial vehicle registration) are expected annually from different operators;

(2) Using an estimate of 160 hours to prepare a plan complete with attachments at a cost of $10 to $100 per hour (assuming the use of consultants for some or all parts of the plan requirements), the cost to prepare a plan could range from $1600 to $16,000.

(3) The NPS added ten percent (i.e., $160 to $1,600) of the cost to prepare a plan of operations to account for administrative costs associated with changes in claim ownership, etc.

An operator with experience in preparing plans of operations likely can prepare an acceptable plan for a moderately complex operation in a few weeks, since most of the components of the plan are compiled during the course of normal business activities. Many of the information requirements of the regulations should be compiled by a responsible operator as part of normal business activities, to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. Under the regulations, information may be submitted in the manner in which it is customarily maintained in the industry. The reclamation plan and environmental report requirements [36 CFR § 9.9(b)(6) and (9), respectively] comprise the bulk of the information collection burden associated with these regulations. There is no standard form for submitting information. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

For the 9B regulations, the NPS used a likely individual compliance cost range of $5,000 to $15,000. The range reflects the differences in types and numbers of operations that may be included in a single plan and the wide variations in the environmental settings in which non-Federal oil and gas development occurs in parks, and the availability of pre-existing environmental data from parks. Much of the information required by 36 CFR § 9.36 should be compiled by a

responsible operator as part of his/her normal business activities to minimize liabilities, maintain business records for tax and other purposes, obtain financial backing, and ensure a safe, efficient, and well-planned operation. The information may be submitted in the manner in which it is customarily maintained in the industry. The NPS does not require conformance with a standardized format. The reclamation plan and environmental report requirements [36 CFR § 9.36(a)(12) and (16), respectively] comprise the bulk of the information collection burden associated with these regulations. The NPS makes pertinent environmental information in park files available to prospective operators to aid in the preparation of proposed plans of operations.

Response to 60-Day Notice: On December 27, 1999, the NPS issued a notice in the **Federal Register** as to its intent to request an extension and revision to the information collection budget associated with the Service's minerals management program pursuant to 36 CFR Part 9 (see 64 FR 72358–72359). The comment period closed on February 25, 2000. The NPS received one comment that questioned whether the NPS had adequately assessed the burden for compliance with NEPA. While NEPA compliance is the responsibility of the NPS and not respondents, the Service's Part 9 regulations do require respondents to submit environmental data to the Service. As a result of the comment, the NPS reassessed the amount of time estimated for respondents to comply with the regulations. The NPS increased that time estimate to 160 hours plus 10% per respondent to more accurately account for time spent collecting and assembling data on the affected environment and possible resource impacts.

Leonard E. Stowe,

Information Collection Officer.

[FR Doc. 00–10855 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) Roll call.

(3) Approval of summary of meeting minutes for November 15–17,1999 meeting in Fairbanks.

(4) Review agenda.

(5) Superintendent's introductions of guests and staff and review of Commission function and purpose.

(6) Superintendent's Management/Research Report Summary.

a. Administration and management.

b. Park operations.

c. Resource management.

d. Subsistence program.

(7) Public and agency comments.

(8) Old Business.

a. Draft Subsistence Management Plan-review of public comments.

(9) New Business

a. Review Federal Subsistence Board and Regional Advisory Council actions.

b. Federal Subsistence Fisheries Management.

c. SRC Work Session (Draft letters/updates Subsistence Management Plan—if necessary).

(10) Set time and place of next SRC meeting.

(11) Adjournment.

DATES: The meeting will be held from 1:30 p.m. until 5 p.m. on Tuesday May 9, 8:30 a.m. to 5 p.m. on Wednesday May 10, and 8:30 a.m. to noon on Thursday May 11, 2000.

LOCATION: The meeting will be held at the IRA building in Ambler, Alaska

FOR FURTHER INFORMATION CONTACT: Jeff Mow, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0578.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487 and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 00–10853 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 22, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 17, 2000.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Yavapai County

Cottonwood Commercial Historic District, Approx. from 712 to 1124 N. Main St., Cottonwood, 00000497

INDIANA

Marion County

Hawthorne Branch Library No. 2, 70 N. Mount St., Indianapolis, 00000499

LOUISIANA

East Baton Rouge Parish

US Post Office and Courthouse—Baton Rouge, 707 Florida Ave., Baton Rouge, 00000500

Rapides Parish

US Post Office and Courthouse—Alexandria, 515 Murray St., Alexandria, 00000501

MASSACHUSETTS

Berkshire County

Main Street Cemetery, Main St., Dalton, 00000502

Plymouth County

Muttock Historic and Archaeological District Address Restricted Middleborough, 00000504

MICHIGAN

Kent County

Medical Arts Building, 26 Sheldon Blvd. SE, Grand Rapids, 00000506

MISSOURI

Greene County

Lincoln School, 815 N. Sherman Ave., Springfield, 00000508

NEW MEXICO

Otero County

US Post Office—Alamogordo, 1101 New York Ave., Alamogordo, 00000510

NORTH CAROLINA

Moore County

Lakeview Historic District, Camp Easter Rd., Crystal Lake Dr., Holly Rd., Matthews Rd., and McFayden Ln., Lakeview, 00000513

Pitt County

Sheppard Thomas, Farm, NC 1550, near jct. of NC 1552, Stokes, 00000517

OREGON

Douglas County

Hershberger Mountain Lookout, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Approx. 7 mi. N of Union Ct., Prospect, 00000507

Jackson County

Dead Indian Soda Springs Shelter, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Near end of S. Fork Little Butte Cr. Rd., Eagle Point, 00000498

Dutchman Peak Lookout, (US Forest Service Historic Structures on the Rogue River National Forest MPS), FS Rd., approx. 25 mi. SW of Ashland, Ashland, 00000509

Fish Lake Shelter, (US Forest Service Historic Structures on the Rogue River National Forest MPS), South of OR 140 approx. 25 mi. NE of Ashland, Ashland, 00000503

McKee Bridge Campground, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Upper Applegate Rd., approx. 7 mi. S of OR 238, Jacksonville, 00000516

Mt. Stella Lookout, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Approx. 2.5 mi. N of Union Cr., Prospect, 00000511

Squaw Peak Lookout, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Approx. 8 mi. S of FS, Rd. 20, 25 mi. S of Jacksonville, Jacksonville, 00000512

Waleback Snow—Survey Cabin, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Approx. 10 mi. N of Prospect, Prospect, 00000514

Wrangle Gap Shelter, (US Forest Service Historic Structures on the Rogue River National Forest MPS), FS, Rd. 20 approx. 25 mi. SW of Ashland, Ashland, 00000505

Klamath County

Moneymoon Creek Snow—Survey Cabin, (US Forest Service Historic Structures on the Rogue River National Forest MPS), Sky Lakes Wilderness, Ashland, 00000515

PENNSYLVANIA

Adams County

Fairfield Historic District, (Adams County properties associated with the Battle of Gettysburg MPS), Roughly bounded by Lands Dr., Steelman St., Wortz Dr., and NW border Fairfield Borough, Fairfield, 00000518

Rock Creek—White Run Union Hospital Complex, (Adams County properties associated with the Battle of Gettysburg MPS), Baltimore Pike, Goulden Rd. and White Church Rd., Mount Joy, 00000520

Lancaster County

Montgomery, William, House, 19–21 S. Queen St., Lancaster, 00000519

UTAH

Salt Lake County

Third Presbyterian Church Parsonage, 1068 E. Blaine Ave., Salt Lake City, 00000522

Warenski—Duvall Commercial Building and Apartments, (Murray City, Utah MPS), 4867 South State St., Murray, 00000521

WISCONSIN

Sauk County

Steam Locomotive #1385, E8948 Diamond Hill Rd., North Freedom, 00000524

Winnebago County

Whiting, Frank B., House, 620 E Forest Ave., Neenah, 00000523

[FR Doc. 00–10854 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Meeting

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet on May 17, 2000 to discuss the BDAC Recommendation on the CALFED Solution, CALFED Implementation and hear reports from the CALFED Acting Executive Director and BDAC Chair. This meeting is open to the public. Interested person may make oral statements to BDAC, or may file written statements for consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES: The BDAC meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, May 17, 2000.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Association of Realtors' Auditorium at 2003 Howe Avenue, Sacramento, CA 95825 (916) 922–8294.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 25, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–10880 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program Policy Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Meeting.

SUMMARY: The CALFED Bay-Delta Program Policy Group will meet on May 24, 2000. The agenda for the Policy Group meeting will include discussion of the CALFED Preferred Program Alternative in the Final Programmatic EIS/R. This meeting is open to the public. Interested persons may make oral statements to the CALFED Bay-Delta Program Policy Group or may file written statements for consideration.

DATES: The CALFED Bay-Delta Program Policy Group meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, May 24, 2000.

ADDRESSES: This meeting will meet at Sacramento Association of Realtors Auditorium, 2003 Howe Avenue, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the direction of the CALFED Policy Group. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. The CALFED Policy Group provides general policy direction on all aspects of the CALFED Program.

Dated: April 25, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00–10881 Filed 5–1–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 5, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–825–826 (Final)(Polyester Staple Fiber from Korea and Taiwan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 15, 2000.)
5. Outstanding action jackets:

(1) Document No. ER–00–001: Approval of FY 1999 Annual Report.

(2) Document No. ID–00–005: Approval of 2000 Annual Report in Inv. No. 332–345 (Recent Trends in U.S. Services Trade).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 25, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–11010 Filed 4–28–00; 2:16 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

April 26, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, room 10235, Washington, DC 20503 ({202} 395–7316), on or before June 1, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: Employers' Use and Assessment of the WOTC and Welfare-to-Work Tax Credit Programs.

OMB Number: 1205–ONew.

Affected Public: Business or other for-profit.

Frequency: One-time only.

Number of Respondents: 16.

Total Annual Responses: 16.

Estimated Time Per respondent: 4 Hours.

Total Annual Burden: 64 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This study will provide in-depth information on how employers use the Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Programs; their experiences with job applicants and newly hired individuals who represent the programs' target groups; the extent to which they maintain data related to the tax credit provisions; their assessment of the efficiency of implementation; and their recommendations for improving the programs.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–10898 Filed 5–1–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

April 26, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darin King ({202} 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 94–20, Purchases and Sales of Foreign Currencies.

OMB Number: 1210–0085.

Recordkeeping: Six years.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 35.

Total Annual Responses: 175.

Estimated Time Per respondent: 5 Minutes.

Total Annual Burden: 15 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof that is a party in interest with respect to such plan. In the absence of this exemption, certain aspects of these transactions could be prohibited by section 406(a) of the Employee Retirement Income Security Act of 1974. This ICR covers the recordkeeping requirements for a bank, broker-dealer, or affiliate thereof.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 90–1—Pooled Separate Accounts.

OMB Number: 1210–0083.

Recordkeeping: Six years.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 128.

Total Annual Responses: 128.

Estimated Time Per respondent: 5 Minutes.

Total Annual Burden: 11 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions involving insurance company pooled separate accounts in which employee benefit plans participate and which are otherwise prohibited by ERISA. Specifically, the exemption allows persons who are parties in interest of a plan that invests in a pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. For example, the general exemption allows a service provider, which also is a party in interest to an employee benefit plan, and an insurance company pooled separate account in which the plan has an interest, to engage in transactions if the plan's participation in the separate account does not exceed specified limits. This ICR covers the recordkeeping requirements for insurance companies.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Definition of Plan Assets—Participant Contributions.

OMB Number: 1210–0100.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions

Frequency: On occasion.

Number of Respondents: 1.

Total Annual Responses: 1.

Estimated Time Per respondent: 3 Hours.

Total Annual Burden: 3 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0

Description: Generally, the regulation provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans on the requirements for transmission of employee contributions withheld from wages. Specifically, this regulation describes when certain monies, which a participant pays to or has withheld by an employer for contribution to an employee benefit plan, are ''plan assets'' for purposes of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code. The Regulation also establishes a procedure (for pension plans only) whereby an employer may obtain an additional 10 business days to comply with the contribution time limits. This ICR covers the notification, bonding, and certification requirements for obtaining an extension.

Type of Review: Revision of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 76–1 and Prohibited Transaction Class Exemption 77–10.

OMB Number: 1210–0058.

Recordkeeping: Six years.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 3,187.

Total Annual Responses: 3,187.

Total Annual Burden: 797 Hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Class Exemption (PTCE) 76–1 provides an exemption, under specified conditions, from certain of ERISA's prohibited transaction provisions under section 406(a) for various transactions involving multi-employer or multiple employer plans. Prohibited Transaction Class Exemption (PTCE) 77–10 complements Part C of PTCE 76–1 in that it provides an exemption under certain conditions from section 406(b)(2) of ERISA in connection with such transactions. PTCE 76–1, Part C permits plans to lease office space and provide administrative services or sell goods to a participating employer or union or to another plan. Section 406(b)(2) prohibits plan fiduciaries, such as plan trustees, from acting in an individual or any other capacity in a transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or its participants or beneficiaries.

The Department has proposed combining the information collection provisions of both exemptions under one OMB control number (OMB Number 1210–0058) by incorporating the information collection provisions of PTCE 77–10 (OMB Number 1210–0081) into the revision information collection under OMB Number 1210–0058 and allowing the control number for PTCE 77–10 to expire. The Department believes the public will benefit by having the opportunity to comment on both information collection provisions at the same time because PTCE 77–10 is not likely to be used without its counterpart, PTCE 76–1.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: 1,2-dibromo-3-chloropropane (DBCP) Standard.

OMB Number: 1281–0101.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 0.

Total Annual Burden: 1 Hour.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collection requirements in the DBCP Standard provide protection for employees from the adverse health effects associated with exposure to DBCP. In this regard, the DBCP Standard requires employers to monitor employees' exposure to DBCP, monitor employee health, and provide employees with information about their exposures and the health effects of exposure to DBCP.

Agency: Mine Safety and Health Administration (MSHA).

Title: Main Fan Maintenance Record.

Type of Review: Extension.

OMB Number: 1219–0012.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 21.

Total Annual Responses: 7.

Estimated Time Per Respondent: 1.57 Hours.

Total Annual Burden: 11 Hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Mine Operators are required to keep main fans maintained according to either manufacturers, recommendations or a written periodic schedule adopted by the mine operator. The main fans are the major life support system to the entire underground mining operation. The air flow provided by the fans assures fresh air to the miners at working faces, reduces the chance of the air reaching threshold limit values of airborne contaminants, and dilutes accumulations of possible explosive gases.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–10899 Filed 5–1–00; 8:45 am]

BILLING CODE 4510–23–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 9:00 a.m. on Tuesday, May 16, 2000 at the offices of the U.S. Institute for Environmental Conflict Resolution, 110 South Church, Ste. 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution; and (2) A report from the Udall Center for Studies and Public Policy; and (3) Program Reports. The meeting is open to the public.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, 110 South Church, Ste. 3350, Tucson, Arizona 85701. Telephone: (520) 670–5608.

Dated this 25th day of April, 2000.

Christopher L. Helms.

[FR Doc. 00–10976 Filed 4–28–00; 10:18 am]

BILLING CODE 6820–FN–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–043]

NASA Advisory Council, Space Flight Advisory Committee (SFAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Flight Advisory Committee.

DATES: Monday, May 15, 2000 from 8:00 a.m. until 5:30 p.m.; on Tuesday, May 16, 2000 from 2:30 p.m. until 4:30 p.m.; and on Wednesday, May 17, 2000 from 8:00 a.m. until 2:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room MIC 5, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Stacey Edgington, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room. The agenda for the meeting is as follows:

- Overview, status and metrics for Office of Space Flight programs.
- Shuttle upgrades review.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 24, 2000.

Matthew Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–10844 Filed 5–1–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice of information collection.

SUMMARY: The NIFL Director invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV.*

SUPPLEMENTARY INFORMATION:

Title: Application for Literacy Information aNd Communication System (LINCS) Special Collection Development Partners Awards to organizations to support the creation and maintenance of subject specific web resources.

Abstract: The National Institute for Literacy (NIFL) was created by the National Literacy Act of 1991 and amended by the Workforce Investment Act of 1998 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. The Act authorizes the NIFL to conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State, and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. The NIFL will provide funding to organizations for the creation of in-depth literacy-related collections of subject specific information on LINCS. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialists using the published criteria. The NIFL will use this information to make up to 10 cooperative agreement awards for a period of up to three years.

Burden Statement: The burden for this collection of information is estimated at 40 hours per response for the first year. This estimate includes the time needed to review instructions, complete the form, and review the collection of information. A three-year cooperative agreement grant will be awarded to no more than 10 applicants. Each awardee will have an annual update of the application requiring an average of 30 hours per response for each continuation year.

Respondents: Public and private non-profit organizations.

Estimated Number of Respondents: 25.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 52 hours.

Frequency of Collection: One time.

Request for Comments

Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The NIFL Director publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains a burden statement that includes the estimated burden hours and other relevant information.

Requests for copies of the proposed information collection request may be accessed from *www.nifl.gov/lincs* or comments regarding burden and/or the collection activity requirements should be addressed to William B. Hawk, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006. Requests also may be electronically mailed to the internet address whawk@nifl.gov or faxed to 202–233–2050. Please specify the complete title of the information collection when making your request.

Dated: April 25, 2000.

Carolyn Y. Staley,

Acting Director, NIFL.

[FR Doc. 00–10870 Filed 5–1–00; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice of information collection.

SUMMARY: The NIFL Director invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the internet address *DWERFEL@OMB.EOP.GOV.*

SUPPLEMENTARY INFORMATION:

Title: Application for Literacy Information aNd Communication System (LINCS) Regional Technology Centers Awards to organizations to support the creation of regional technology coordinating centers to

expand and coordinated LINCS services at the regional and state level.

Abstract: The National Institute for Literacy (NIFL) was created by the National Literacy Act of 1991 and amended by the Workforce Investment Act of 1998 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. The Act authorizes the NIFL to conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. The NIFL will provide funding to organizations for the creation of regional technology centers that will represent and promote LINCS within their region; work with the NIFL and other regional technology centers to improve and expand LINCS; provide literacy-related resources through LINCS; and train organizations and individuals in the use of LINCS and technology and carry out such other tasks as called for in the information collection request. Evaluations to determine successful applications will be made by a panel of literacy experts and information specialists using the published criteria. The NIFL will use this information to make up to 5 cooperative agreement awards for a period of up to three years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response for the first year. This estimate includes the time needed to review instructions, complete the form, and review the collection of information. No more than five applicants will be awarded a three-year cooperative agreement grant. Each awardee will have an annual update of the application requiring an average of 40 hours per response for each continuation year.

Respondents: Public and private non-profit organizations.

Estimated Number of Respondents: 15.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 79 hours.

Request for Comments

Section 3506 of the Paperwork Reduction Act of 1995 (44 USC Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The NIFL director publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains a burden statement that includes the estimated burden hours and other relevant information.

Requests for copies of the proposed information collection request may be accessed from www.nifl.gov/lines or comments regarding burden and/or the collection activity requirements should be addressed to Jaleh Behroozi Soroui, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006. Requests also may be electronically mailed to the internet address jbehroozi@nifl.gov or faxed to 202–233–2050. Please specify the complete title of the information collection when making your request.

Dated: April 25, 2000.

Carolyn Y. Staley,

Acting Director, NIFL.

[FR Doc. 00–10871 Filed 5–1–00; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Public Law 103–227. The 23-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a voluntary national system of skill standards and certification through voluntary partnerships which have the full and balanced participation of business, labor, education, civil rights organizations and other key groups.

Time and Place: The meeting will be held from 8:30 a.m. to approximately 12:00 p.m. on Wednesday, May 17th, at the Holiday Inn Select, 480 King Street, Old Towne Alexandria, VA 22314, (703–549–6080).

Agenda: The agenda for the Board Meeting will include: an update from the Board's committees; presentations from representatives of the Sales & Service Voluntary Partnership (SSVP), Education and Training Voluntary Partnership (E&TVP) and Manufacturing Skill Standards Council (MSSC).

Public Participation: The meeting from 8:30 a.m. to 12:00 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Leslie Donaldson at (202) 254–8628 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Dave Wilcox, Executive Deputy Director at (202) 254–8628.

Signed at Washington, D.C., this 26th day of April, 2000.

Dave Wilcox,

Deputy Director, National Skill Standards Board.

[FR Doc. 00–10903 Filed 5–1–00; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 65, No. 80/Tuesday, April 25, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Wednesday, May 3, 2000.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required deleting the following item from the agenda at this time and that no earlier announcement was possible.

7256 Special Investigation Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: April 27, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–10961 Filed 4–27–00; 4:41 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 40–8794–MLA, 40–8778–MLA, ASLBP No. 99–769–08–MLA]

Atomic Safety and Licensing Board Panel; In the matter of: Molycorp, Inc., Washington, Pennsylvania; Temporary Storage of Decommissioning Wastes; Notice of Hearing

April 26, 2000.

This proceeding involves a proposed amendment by Molycorp, Inc. to its Source Materials License No. SMB–

1393, to authorize temporary storage (5–10 years) of decommissioning wastes emanating from the Molycorp, Inc. facility in York, Pennsylvania, at the Molycorp facility in Washington, Pennsylvania. The proposal under review was submitted to the Nuclear Regulatory Commission on February 8, 1996, and would authorize storage of wastes from the former rare earth processing facility (License No. SMB–1408) at York, Pennsylvania, consisting of decommissioning waste soils containing thorium-232 and uranium-238.

Notice is hereby given that, by Memorandum and Order, LBP–00–10, 51 NRC __ (April 11, 2000) (as amended by an Errata dated April 19, 2000), the Presiding Officer has granted the requests for a hearing submitted by Canton Township, Pennsylvania, and the City of Washington, Pennsylvania. Parties to this proceeding are the Licensee, Molycorp, Inc., Canton Township and the City of Washington, Pennsylvania, Intervenors. (The Staff of the Nuclear Regulatory Commission has elected not to participate in this proceeding.)

This proceeding will be conducted under the Commission's informal hearing procedures set forth in 10 CFR Part 2, Subpart L. In response to a Notice of Opportunity for Hearing, published at 64 FR 31021 (June 9, 1999), Canton Township and the City of Washington each submitted timely hearing requests. Administrative Judge Charles Bechhoefer has been designated Presiding Officer and, pursuant to 10 CFR 2.722 and 2.1209, Administrative Judge Richard F. Cole has been appointed as Special Assistant to assist the Presiding Officer in taking evidence and preparing a suitable record for review. 64 FR 39176 (July 21, 1999); *id.* at 55785 (October 14, 1999).

During the course of this proceeding, the Presiding Officer, pursuant to 10 CFR 2.1211(a), will entertain limited appearance statements from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Presiding Officer and parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may at his discretion hear oral statements, at a time and location yet to be determined. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statement or request should also be served on the Presiding Officer, T–3F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St., NW, Washington, D.C. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

Rockville, Maryland, April 26, 2000.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 00–10884 Filed 5–1–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–388]

PP&L, Inc.; Notice of Correction to Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

On April 21, 2000 (65 FR 21487), the **Federal Register** published a notice of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing for PP&L, Inc.. On page 21488, third column, second paragraph, the date May 5, 2000 was incorrectly noted. It should read ''May 22, 2000.''

Dated at Rockville, Maryland, this 27th day of April 2000.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Rules Review and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 00–10885 Filed 5–1 –00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 1, 8, 15, 22, 29, and June 5, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 1

Tuesday, May 2

9:30 a.m.
Briefing on Oconee License Renewal (Public Meeting) (Contact: Dave Lange, 301–415–1730)

Wednesday, May 3

9:25 a.m.
Affirmation Session (Public Meeting)
a: Final Rule: Revision of Part 50, Appendix K, ''ECCS Evaluation Models''
b: GPU NUCLEAR, INC., Docket No. 50–219–LT; Petition to Intervene

9:30 a.m.
Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 8—Tentative

Monday, May 8

10:00 a.m.
Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokai-Mura and the implications on the NCR's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076)

Tuesday, May 9

8:55 a.m.
Affirmation Session (Public Meeting) (If needed)

9:00 a.m.
Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 15—Tentative

Tuesday, May 16

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of May 22—Tentative

Thursday, May 25

8:30 a.m.
Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Joe Shea, 301–415–1727)

10:15 a.m.
Briefing on Status of Regional Programs, Performance and Plans (Public Meeting) (Contact: Joe Shea, 301–415–1727)

1:30 p.m.
Briefing on Improvements to 2.206 Process (Public Meeting)

Week of May 29—Tentative

Tuesday, May 30

9:25 a.m.
Affirmation Session (Public Meeting) (If Needed)

Week of June 5

There are no meetings scheduled for the Week of June 5.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301)—415–1292.

CONTACT PERSONS FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to whm@nrc.gov or dkw@nrc.gov.

Dated: April 28, 2000.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 00–11012 Filed 4–28–00; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Termination of Agreement Between the U.S. Nuclear Regulatory Commission and the State of Louisiana Pursuant to Section 274i of the Atomic Energy Act of 1954, as Amended

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Termination of Section 274i Agreement.

SUMMARY: Notice is hereby given that effective April 26, 2000, the section 274i agreement between the State of Louisiana and the U.S. Nuclear Regulatory Commission (NRC or Commission) is terminated, in response to the March 22, 2000 request from Louisiana Governor M. J. ''Mike'' Foster.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION: Contact Kevin Hsueh, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone 301–415–2598 or by Internet electronic mail at KPH@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

In 1967, the State of Louisiana and the United States Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission) entered into an agreement for the discontinuance of the Commission's regulatory responsibilities over the use and possession of certain types of radioactive material in Louisiana. This agreement was noticed in the **Federal Register** on May 3, 1967 (32 FR 6806). The State of Louisiana, in turn, assumed authority over these regulatory activities formerly exercised by the Commission. The Commission entered into this agreement with the State of Louisiana pursuant to section 274b of the Atomic Energy Act of 1954, as amended. This agreement for the discontinuance of the Commission's authority became effective May 1, 1967 and, at the same time, established Louisiana as an Agreement State. Additionally, on May 3, 1967 (32 FR 6807), the Commission published in the **Federal Register** a notice of an agreement between the State of Louisiana and the Commission which permitted the State to perform inspections or other functions in offshore waters adjacent to Louisiana on behalf of the Commission. This inspection agreement, entered into pursuant to section 274i of the Act, did not expand the State's regulatory authority but rather specifically authorized the State to conduct inspection activities and other functions on the Commission's behalf.

The NRC has received a letter from Louisiana Governor M. J. ''Mike'' Foster, Jr., dated March 22, 2000 requesting termination of the section 274i agreement, effective 30 days from receipt of the letter. The request was filed in accordance with section 6 of the inspection agreement, which states

> ''Sixth: This Agreement shall become effective on May 1, 1967, and shall remain in effect so long as the 274b. Agreement remains in effect unless sooner terminated by either party on 30 days' prior written notice.''

Governor Foster noted that difficulties arranging transportation and a lack of both financial and personnel resources have made in burdensome to conduct field activities for the NRC. The State has concluded that the section 274i inspection agreement is no longer needed and should be terminated.

Effective April 26, 2000, the inspection agreement entered into by the State of Louisiana and the Commission has been terminated. On that date, the NRC, not the State, will conduct inspections of NRC-licensed activities in offshore waters adjacent to Louisiana. In addition, NRC plans to issue a conforming amendment to its reciprocity regulations at 10 CFR 150.20(d) which will remove the specific reference to the Commission's inspection agreement with Louisiana. As part of the rulemaking or in a separate communication, the NRC will provide guidance to Louisiana licensees regarding the impacts that the termination of this agreement will have on the notification and fee requirements for activities conducted in offshore waters.

Termination of the section 274i inspection agreement, however, does not in any way affect the existing agreement between the Commission and the State of Louisiana entered into pursuant to section 274b of the Act. Accordingly, termination of the inspection agreement does not affect Louisiana's status as an Agreement State.

Dated at Rockville, Maryland, this 26th day of April, 2000.

Frederick C. Combs,

Deputy Director, Office of State and Tribal Programs.

[FR Doc. 00–10886 Filed 5–1–00; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Procedures and Guidance; Implementation of the Government Paperwork Elimination Act

AGENCY: Office of Management and Budget, Executive Office of the President.

SUMMARY: The Office of Management and Budget (OMB) provides procedures and guidance to implement the Government Paperwork Elimination Act (GPEA). GPEA requires Federal agencies, by October 21, 2003, to allow individuals or entities that deal with the agencies the option to submit information or transact with the agency electronically, when practicable, and to maintain records electronically, when practicable. The Act specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form, and encourages Federal government use of a range of electronic signature alternatives.

Electronic Availability: This document is available on the Internet in the OMB library of the ''Welcome to the White House'' home page, http://www.whitehouse.gov/OMB/, the Federal CIO Council's home page, http:/

/cio.gov/, and the Federal Public Key Infrastructure Steering Committee home page, http://gits-sec.treas.gov/.

FOR FURTHER INFORMATION CONTACT: Jonathan Womer, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, (202) 395–3785. Press inquiries should be addressed to the OMB Communications Office, (202) 395–7254. Inquiries may also be addressed to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236 New Executive Office Building, Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION:

Background

This document provides Executive agencies the guidance required under Sections 1703 and 1705 of the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII, which was signed into law on October 21, 1998. GPEA is an important tool to improve customer service and governmental efficiency through the use of information technology. This improvement involves transacting business electronically with Federal agencies and widespread use of the Internet and its World Wide Web.

As public awareness of electronic communications and Internet usage increases, demand for on-line interactions with the Federal agencies also increases. Moving to electronic transactions and electronic signatures can reduce transaction costs for the agency and its partner. Transactions are quicker and information access can be more easily tailored to the specific questions that need to be answered. As a result data analysis is easier. These access and data analysis benefits often have a positive spillover effect into the rest of the agency as awareness of the agency's operations is improved. In addition, reengineering the work process associated with the transaction around the new electronic format can give rise to other efficiencies.

Public confidence in the security of the government's electronic information processes is essential as agencies make this transition. Electronic commerce, electronic mail, and electronic benefits transfer can require the exchange of sensitive information within government, between the government and private industry or individuals, and among governments. These electronic systems must protect the information's confidentiality, ensure that the information is not altered in an unauthorized way, and make it available when needed. A corresponding policy and management structure must support the hardware and software that delivers these services.

To provide for a broad framework for ensuring the implementation of electronic systems in a secure manner, the Administration has taken a number of actions. In February 1996, OMB revised Appendix III of Circular A–130, which provided guidance to agencies on securing information as they increasingly rely on open and interconnected electronic networks to conduct business. In May 1998, the President issued Presidential Decision Directive 63, which set a goal of a reliable, interconnected, and secure information system infrastructure by the year 2003, and significantly increased security for government systems by the year 2000 based on reviews by each department and agency. In September, 1998, OMB and the Federal Public Key Infrastructure Steering Committee published ''Access With Trust'' (available at http://gits-sec.treas.gov/). This report describes the Federal government's goals and efforts to develop a Public Key Infrastructure (PKI) to enable the widespread use of cryptographically-based digital signatures. On December 17, 1999, the President issued a Memorandum, ''Electronic Government,'' which called on Federal agencies to use information technology to ensure that governmental services and information are easily accessible to the American people (Weekly Compilation of Presidential Documents, vol. 35, pp. 2641–43, (December 27, 1999); also available at http://cio.gov/). Among other things, the President charged the Administrator of General Services, in coordination with agencies, to assist agencies in the development of private, secure and effective electronic communication across agencies and with the public through the use of public key technology. This technology can offer significant benefits in facilitating electronic commerce through a shared, interoperable, government-wide infrastructure.

What is the Purpose of GPEA?

GPEA seeks to ''preclude agencies or courts from systematically treating electronic documents and signatures less favorably than their paper counterparts'', so that citizens can interact with the Federal government electronically (S. Rep. 105–335). It requires Federal agencies, by October 21, 2003, to provide individuals or entities that deal with agencies the option to submit information or transact with the agency electronically, and to maintain records electronically, when practicable. It also addresses the matter of private employers being able to use electronic means to store, and file with Federal agencies, information pertaining to their employees.

GPEA states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. It also encourages Federal government use of a range of electronic signature alternatives.

This guidance implements GPEA, fosters a successful transition to electronic government as contemplated by the President's memorandum, and employs where appropriate the work described in ''Access with Trust.''

What Were the Comments on the Proposed Implementation?

On March 5, 1999, OMB published the ''Proposed Implementation of the Government Paperwork Elimination Act'' for public comment. (64 FR 10896). It was also sent directly to Federal agencies for comment and made available via the Internet. In addition, OMB met with relevant committees and staff of many interested organizations including: American Bar Association (both the Business Law and the Science and Technology Sections); American Bankers Association; National Automated Clearing House Association; National Governors Association; National Association of State Information Resource Executives; National Association of State Auditors, Controllers and Treasurers; National Association of State Purchasing Officers; the Government of Canada; the Government of Australia; and relevant industry forums. All were uniformly positive about the content and tone of the guidance. OMB received specific comments from 24 organizations. Most comments proposed changes in clarity and detail. Where the comments added clarity and did not contradict the goals of the guidance, they were incorporated. The principal substantive issues raised in the comments and our responses to them are described below.

I. Comments Regarding Risks and Benefits

A number of comments, including those from the Justice Department and the General Accounting Office, requested that the guidance contain further information on how to conduct the assessments of practicability needed to determine the proper combination of technology and management controls to manage the risk of converting transactions and record keeping to

electronic form, and then conducting transactions electronically. Each assessment should contain elements of risk analysis and measurements of other costs and benefits. Most comments on assessment referred to the risk analysis portion.

Risk analyses provide decisionmakers with information needed to understand the factors that can degrade or endanger operations and outcomes and to make informed judgments about what actions need to be taken to reduce risk. Consistent with the Computer Security Act (40 U.S.C. 759 note), Appendix III of OMB Circular No. A–130, ''Security of Federal Automated Information Resources,'' (34 FR 6428, February 20, 1996), Federal managers should design and implement their information technology systems in a manner that is commensurate with the risk and magnitude of harm from unauthorized use, disclosure, or modification of the information in those systems. To determine what constitutes adequate security, a risk-based assessment must consider all major risk factors, such as the value of the system or application, threats, vulnerabilities, and the effectiveness of current and proposed safeguards. Low-risk information processes may need only minimal consideration, while high-risk processes may need extensive analysis. OMB reiterated these principles on June 23, 1999, in OMB Memorandum No. 99-20, ''Security of Federal Automated Information Resources,'' and reminded agencies to continually assess the risk to their computer systems and maintain adequate security commensurate with that risk, particularly as they take increasing advantage of the internet and the world wide web in providing information and services to citizens. (Available at: http://cio.gov/ and http://whitehouse.gov/omb/memoranda/m-99–20.html).

The Commerce Department's National Institute of Standards and Technology (NIST) also recognizes the importance of conducting risk analyses for securing computer-based resources. NIST provides guidance on risk analysis (available at http://csrc.nist.gov/nistpubs):

- ''Good Security Practices for Electronic Commerce, Including Electronic Data Interchange,'' Special Publication 800–9 (December 1993);
- ''An Introduction to Computer Security: The NIST Handbook,'' Special Publication 800-12 (December 1995);
- ''Generally Accepted Principles and Practices for Securing Information Technology Systems,'' Special Publication 800–14 (September 1996); and
- ''Guide for Developing Security Plans for Information Technology Systems,'' Special Publication 800–18 (December 1998).

More recently, the General Accounting Office published ''Information Security Risk Assessment: Practices of Leading Organizations,'' GAO/AIMD–00–33 (November 1999) (Available at http://www.gao.gov/). This document is intended to help Federal managers implement an ongoing information security risk analysis process by suggesting practical procedures that have been successfully adopted by organizations known for their good risk analysis practices. This document describes various models and methods for analyzing risk, and identifies factors that are important in a risk analysis.

A quantitative risk analysis generally attempts to estimate the monetary cost of risk compared with that of risk reduction techniques based on (1) the likelihood that a damaging event will occur, (2) the costs of potential losses, and (3) the costs of mitigating actions that could be taken. Availability of data affects the extent to which risk analysis results may be quantified reliably. The GAO report recognizes, however, that reliable data on likelihood and risks often may not be available, in which case a qualitative approach can be taken by defining risk in more subjective and general terms such as high, medium, and low. In this regard, qualitative analyses depend more on the expertise, experience, and good judgment of the Federal managers conducting the analysis. It also may be possible to use a combination of quantitative and qualitative methods.

Other commenters wanted more guidance on how to weigh the risk analysis with other costs and benefits. In combination with the risk analysis, the results of a cost-benefit analysis should be used to judge the practicability of such a process transformation. All major information technology investments are evaluated under the Appendices of OMB Circular No. A–130, ''Management of Federal Information Resources'' and Part 3 of OMB Circular No. A–11 ''Planning, Budgeting, and Acquisition of Capital Assets.'' Specific guidance on information technology cost-benefit analysis is available from the Capital Planning and IT Investment Committee of the Federal CIO Council in the recently published ''ROI and the Value Puzzle.'' (Available at: http://cio.gov/). When developing collections of information under the Paperwork Reduction Act, agencies currently address the practicality of electronic submission, maintenance, and disclosure. The GPEA guidance builds on the requirements and scope of the PRA; all transactions that involve Federal information collections covered under the PRA are also covered under GPEA. In addition, agencies should follow OMB Memorandum 00–07 ''Incorporating and Funding Security in Information Systems Investments'', issued February 28, 2000, which provides information on building security into information technology investments (also available at: http://cio.gov/).

The Department of Justice commented on the need for each agency to consider the broad range of legal risks involved in electronic transactions. Justice's comments are especially appropriate for particularly sensitive transactions, including those likely to give rise to civil or criminal enforcement proceedings and we expect them to be further developed in Juctice's forthcoming practical guidance. The risk analysis process required by the Computer Security Act and by good practice must be tailored to the risks and related mitigation costs that pertain to each system, as understood by the Federal managers most knowledgeable with the systems. When evaluating legal risks, Federal managers should consult with their legal counsel about any specific legal implications due to the use of electronic transactions or documents in the application in question. Agencies should also keep in mind that GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. We are not, therefore, prescribing specific ''one size fits all'' requirements applicable to transactions regardless of sensitivity.

In light of all the above comments, we have added greater detail to the practicability aspects of the guidance, and an expanded discussion of cost-benefit analysis and its relation to risk analysis. We have also placed additional emphasis on the need for risk analyses to identify and address the full range of risks, including reasonably expected legal and enforcement risks, and technological risks. Further, we included a reporting mechanism in Part I Section 3 to facilitate the assessment of practicability. Although many of the comments concern the costs and risks of changing to electronic transactions, it is also important to consider the full range of benefits that electronic transactions can provide. Possible benefits include: increased partner participation and customer satisfaction; reduced

transaction costs and increased transaction speed; improved record keeping and new opportunities for analysis of information; and greater employee productivity and enhanced quality of their output. An agency's consideration of risks needs to be balanced with a full consideration of benefits.

II. Comments Regarding Technology Neutrality

A number of comments concerned the emphasis on technology neutrality with regard to the various electronic signature alternatives. They suggested we endorse one electronic signature technology in order to promote interoperability and ease of use. Other commenters disagreed. They expressed concern that promoting one technology requires predicting the direction and future of information technology standards and practices, which is a notoriously difficult task. Further, there are sometimes technologies that naturally fit particular electronic transactions and are easier to implement from a security, privacy, technical, or operational perspective than others. For example, implementing a technology that is easy to use would naturally fit when encouraging citizens to participate in electronic transactions.

We do not believe it would be appropriate to endorse one technology, and we share the concerns of those commenters who argued against such an endorsement. At the same time, we recognize that cryptographically-based digital signatures (i.e., public key technology) hold great promise for ensuring both authentication and privacy in networked interactions, and may be the only technology available that can foster interoperability across numerous applications. There are, however, applications where personal identification numbers (PINs) and other shared secret techniques may well be appropriate. These are generally relatively low risk applications where interoperability is of lesser importance. A number of agencies have successfully used PINs in groundbreaking applications, particularly the Securities and Exchange Commission for regulatory filings and the Internal Revenue Service for tax filings. They have recognized the benefits of using PINs, but at the same time they are planning for an eventual transfer to digital signatures.

Accordingly, the final guidance maintains the basic policy of technology neutrality for automated transactions while recognizing that agencies should select an alternative relative to the risk of the application, and calls on agencies to consider all of the available electronic signature technologies (including the advantages of public key technology) as part of their assessments.

III. Comments Regarding Records Management

Several comments suggested that the guidance should give further emphasis to the role of the National Archives and Records Administration in working with the agencies to address the maintenance, preservation, and disposal of Federal records that are associated with electronic government transactions. We agree. The final guidance explicitly addresses NARA's role in the area of electronic records management, particularly as it relates to the use of electronic signature technologies.

IV. Comments regarding privacy protection

Some commenters were concerned with the privacy implications of the guidance. They want to ensure that any move to electronic transactions does not encourage the gathering of unnecessary information, and that Federal agencies adequately protect the personal information that does need to be collected. We agree that agencies must incorporate privacy protections when developing electronic processes. Several helpful suggestions were made that have been incorporated into the final guidance. With respect to a commenters' concern that agencies not collect unnecessary information, the Privacy Act requires an agency to ''maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency.'' 5 U.S.C. 552a(e)(1); see e.g. *Reuber* v. *United States,* 829 F. 2d 133, 138–40 (D.C.C. 1987). Furthermore, the collection by agencies of unnecessary information would be contrary to the Paperwork Reduction Act's mandate that agencies collect only information that is ''necessary for the proper performance of the functions of the agency'' and ''has practical utility.'' 44 U.S.C. 3508.

V. State, Local and Non-governmental Concerns

A number of comments were received from non-Federal entities. These comments were primarily concerned with the broader implications of the Act itself rather than the draft guidance. Specifically, some governmental entities expressed concern that Federal adoption of routine electronic transactions would require state and local governments to provide equivalent access for citizens. Some commenters were also concerned that they would be required to make all future transactions with the Federal government in an electronic format. Consultations with the state government groups identified above, during and subsequent to the comment period, seem to have alleviated these concerns significantly, particularly as we explained that GPEA contemplates optional rather than mandatory electronic transactions with the Federal government. Agencies are required to provide the option to their transaction partners. Transaction partners are not required to use the electronic option.

What Are the Future Plans for this Guidance?

We intend to place this guidance into an appendix of OMB Circular A–130 as it is updated. OMB's final procedures and guidance on implementing the Government Paperwork Elimination Act are set forth below.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

April 25, 2000

M–00–10

Memorandum for the Heads of Departments and Agencies

From: Jacob J. Lew, Director

Subject: OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act

This document provides Executive agencies with the guidance required under Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII.

GPEA requires agencies, by October 21, 2003, to provide for the (1) option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) use and acceptance of electronic signatures, when practicable. GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form.

GPEA is an important tool in fulfilling the vision of improved customer service and governmental efficiency through the use of information technology. This vision contemplates widespread use of the Internet and its World Wide Web, with Federal agencies transacting business electronically as commercial enterprises are doing. Members of the public who wish to do business this way may avoid traveling to government offices, waiting in line, or mailing paper forms. The Federal government can also save time and money transacting business electronically.

This guidance also implements part of the President's memorandum of December 17, 1999, ''Electronic Government,'' which calls on Federal agencies to use information technology in ensuring that governmental services and information are easily accessible to the American people. Among other things, the President charged the Administrator of General Services, in coordination with appropriate agencies and organizations, to assist agencies in developing private, secure, and effective communication across agencies and with the public through the use of digital signature technology.

Creating more accessible and efficient government requires public confidence in the security of the government's electronic information communication and information technology systems.

Electronic commerce, electronic mail, and electronic benefits transfer can involve the exchange of sensitive information within government, between government and private industry or individuals, and among governments. Electronic systems must be able to protect the confidentially of citizens' information, authenticate the identity of the transacting parties to the degree required by the transaction, guarantee that the information is not altered in an unauthorized way, and provide access when needed.

To reach these goals, agencies must meet objectives outlined by GPEA guidance. First, each agency must build on their existing efforts to implement electronic government by developing a plan and schedule that implement, by the end of Fiscal Year 2003, optional electronic maintenance, submission, or transactions of information, when practicable as a substitute for paper, including through the use of electronic signatures when practicable.

Agencies must submit a copy of the plan to OMB by October 2000 and coordinate the plan and schedule with their strategic IT planning activities that support program responsibilities consistent with the budget process (as required by OMB Circular A–11).

Attachment

Implementation of the Government Paper Work Elimination Act contains:

Part I. What policies and procedures should agencies follow?

Section 1. What GPEA policies should agencies follow?

Section 2. What GPEA procedures should agencies follow?

Section 3. How should agencies implement these policies and procedures?

Part II. How can agencies improve service delivery and reduce burden through the use of electronic signatures and electronic transactions?

Section 1. Introduction and background

Section 2. What is an ''electronic signature?''

Section 3. How should agencies assess the risks, costs, and benefits?

Section 4. What benefits should agencies consider in planning and implementing electronic signatures and electronic transactions?

Section 5. What risk factors should agencies consider in planning and implementing electronic signatures or electronic transactions?

Section 6. What privacy and disclosure issues affect electronic signatures and electronic transactions?

Section 7. What are current electronic signature technologies?

Section 8. How should agencies implement electronic signatures and electronic transactions?

Section 9. Summary of the procedures and checklist

Part I. What policies and procedures should agencies follow?

Section 1. What GPEA policies should agencies follow?

The Government Paperwork Elimination Act (GPEA) requires Federal agencies, by October 21, 2003, to provide individuals or entities the option to submit information or transact with the agency electronically and to maintain records electronically when practicable. GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. It also encourages Federal government use of a range of electronic signature alternatives.

Sections 1703 and 1705 of GPEA charge the Office of Management and Budget (OMB) with developing procedures for Executive agencies to follow in using and accepting electronic documents and signatures, including records required to be maintained under Federal programs and information that employers are required to store and file with Federal agencies about their employees. These procedures reflect and are to be executed with due consideration of the following policies:

a. maintaining compatibility with standards and technology for electronic signatures generally used in commerce and industry and by State governments;

b. not inappropriately favoring one industry or technology;

c. ensuring that electronic signatures are as reliable as appropriate for the purpose in question;

d. maximizing the benefits and minimizing the risks and other costs;

e. protecting the privacy of transaction partners and third parties that have information contained in the transaction;

f. ensuring that agencies comply with their recordkeeping responsibilities under the FRA for these electronic records. Electronic record keeping systems reliably preserve the information submitted, as required by the Federal Records Act and implementing regulations; and

g. providing, wherever appropriate, for the electronic acknowledgment of electronic filings that are successfully submitted.

Section 2. What GPEA procedures should agencies follow?

a. GPEA recognizes that building and deploying electronic systems to complement and replace paper-based systems should be consistent with the need to ensure that investments in information technology are economically prudent to accomplish the agency's mission, protect privacy, and ensure the security of the data. Moreover, a decision to reject the option of electronic filing or record keeping should demonstrate, in the context of a particular application and upon considering relative costs, risks, and benefits given the level of sensitivity of the process, that there is no reasonably cost-effective combination of technologies and management controls that can be used to operate the transaction and sufficiently minimize the risk of significant harm. Accordingly, agencies should develop and implement plans, supported by an assessment of whether to use and accept documents in electronic form and to engage in electronic transactions. The assessment should weigh costs and benefits and involve an appropriate risk analysis, recognizing that low-risk information processes may need only minimal consideration, while high-risk processes may need extensive analysis.

b. Performing the assessment to evaluate electronic signature alternatives should not be viewed as an isolated activity or an end in itself. Agencies should draw from and feed

into the interrelated requirements of the Paperwork Reduction Act, the Privacy Act, the Computer Security Act, the Government Performance and Results Act, the Clinger-Cohen Act, the Federal Managers' Financial Integrity Act, the Federal Records Act, and the Chief Financial Officers Act, as well as OMB Circular A–130 and Presidential Decision Directive 63.

c. The assessment should develop strategies to mitigate risks and maximize benefits in the context of available technologies, and the relative total costs and effects of implementing those technologies on the program being analyzed. The assessment also should be used to develop baselines and verifiable performance measures that track the agency's mission, strategic plans, and tactical goals, as required by the Clinger-Cohen Act.

d. In addition to serving as a guide for selecting the most appropriate technologies, the assessment of costs and benefits should be designed so that it can be used to generate a business case and verifiable return on investment to support agency decisions regarding overall programmatic direction, investment decisions, and budgetary priorities. In doing so, agencies should consider the effects on the public, its needs, and its readiness to move to an electronic environment.

Section 3. How should agencies implement these policies and procedures?

a. To ensure a smooth and cost-effective transition to an electronic government that provides improved service to the public, each agency must:

(1) Develop a plan (including a schedule) by October, 2000 that provides for continued implementation, by the end of Fiscal Year 2003, of optional electronic maintenance, submission, or transaction of information when practicable as a substitute for paper, including through the use of electronic signatures when practicable. The plan must address, among other things (and where applicable), the optional use by employers of electronic means to store and file with Federal agencies information about their employees. The plan should prioritize agency implementation of systems or modules of systems based on achievability and net benefit. The plan must be an addition to the agency's strategic IT planning activities supporting program responsibilities, as required by OMB Circular A–11. A copy of the plan should be provided to OMB.

(2) For each agency information system identified in the plan required in #1 above, consider relative costs, risks, and benefits given the level of sensitivity of the process(es) that the system supports. Agency considerations of cost, risk, and benefit, as well as any measures taken to minimize risks, should be commensurate with the level of sensitivity of the transaction. Low-risk information processes may need only minimal consideration, while high-risk processes may need extensive analysis.

(3) Based on the considerations in #2 each agency in its plan must include:

(a) The name of the information process or group of processes being automated.

(b) A brief description of the information processes being automated. In addition, the description must:

1. Indicate whether further risk management measures are appropriate.

2. Where such measures are appropriate, indicate when and how a combination of information security practices, authentication technologies, management controls, or other business processes for each application will be practicable. In addition, if a particular application is not practicable for conversion to electronic interaction as part of the plan, agencies should explain the reasons and report any strategy to make such conversion practicable.

(c) The date of automation for the information process(es). If the implementation is judged to be not practicable by October 2003, that conclusion may be noted instead of the date. The dates should reflect the prioritization based on achievability and net benefit as discussed in #1 above.

(4) Consistent with the plan take measures (including, if necessary, amending regulations or policies to remove impediments to electronic transactions) to: (a) implement optional electronic submission, maintenance, or disclosure of information and the use of any necessary electronic signature alternatives; and (b) permit private employers who have record keeping responsibilities imposed by the Federal government to store and file information pertaining to their employees electronically.

(5) Ensure that measures taken under the plan reflect appropriate information system confidentiality and security in accordance with the Privacy Act, the Computer Security Act, as amended, and the guidance contained in OMB Circular A–130, Appendices I and III; and ensure that these measures use, to the maximum extent practicable, technologies that are either prescribed in Federal Information Processing Standards promulgated by the Secretary of Commerce or are supported by voluntary consensus standards as defined in OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment Activities,'' (63 FR 8546; February 19, 1998).

(6) Report progress annually against the plan (including any appropriate revisions to the schedule) above along with annual performance reporting required under OMB Circular A–11.

(7) Consider the record keeping functionality of any systems that store electronic documents and electronic signatures, to ensure users have appropriate access to the information and can meet the agency's record keeping needs.

(8) In developing collections of information under the Paperwork Reduction Act, address whether optional electronic submission, maintenance, or disclosure of information (including the electronic storage and filing by employers of information about their employees) would be practicable as a means of decreasing the burden and/or increasing the practical utility of the collection.

b. Department of Commerce

The Department of Commerce must promulgate, in consultation with the agencies and OMB, Federal Information Processing Standards as appropriate to further the specific goals of GPEA. The Department should also develop guidance in the area of authentication technologies and implementations, including cryptographic digital signature technology, with assistance from the Chief Information Officers Council and the Public Key Infrastructure Steering Committee.

c. Department of the Treasury

The Department of the Treasury must develop, in consultation with the agencies and OMB, policies and practices for the use of electronic transactions and authentication techniques for use in Federal payments and collections and ensure that they fulfill the goals of GPEA.

d. Department of Justice

The Department of Justice must develop, in consultation with the agencies and OMB, practical guidance on legal considerations related to agency use of electronic filing and record keeping.

e. National Archives and Records Administration

The National Archives and Records Administration must develop, in consultation with the agencies and OMB, policies and guidance on the management, preservation, and disposal of Federal records associated with electronic government transactions, and

must give particular consideration to records issues associated with the use of electronic signature technologies.

f. General Services Administration

The General Services Administration must support agencies' implementation of digital signature technology and related electronic service delivery.

g. Office of Management and Budget

OMB must provide continuing guidance and oversight for the implementation of GPEA, including through its review of collections of information under the Paperwork Reduction Act.

Part II. How can agencies improve service delivery and reduce burden through the use of electronic signatures and electronic transactions?

This part provides Federal managers with basic information to assist in planning for an orderly and efficient transition to electronic government. Agencies should begin their planning promptly to ensure compliance with the timetable in GPEA.

Section 1. Introduction and Background

a. As required by GPEA, this Part provides guidance to agencies for deciding whether to use electronic signature technology for a particular application. GPEA requires Federal agencies, by October 21, 2003, to allow individuals or entities the option to submit information or transact with the agencies electronically and to maintain records electronically, when practicable. It specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. It also encourages Federal government use of a range of electronic signature alternatives. The guidance helps agencies consider which electronic signature technology may be most appropriate and suggests methods to maximize the benefit of electronic information while minimizing risk when implementing a particular electronic signature technology to secure electronic transactions.

The guidance builds on the requirements and scope of the Paperwork Reduction Act of 1995 (PRA). According to the PRA agencies must, ''consistent with the Computer Security Act of 1987 (CSA) (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.'' 44 U.S.C. 3506(g)(3). In addition, we note that all transactions that involve Federal information collections covered under the PRA are also covered under GPEA.

b. As GPEA, PRA, CSA, and the Privacy Act recognize, the goal of information security is to protect the integrity and confidentiality of electronic records and transactions that enable business operations. Different security approaches offer varying levels of assurance in an electronic environment and are appropriate depending on a balance between the benefits from electronic information transfer and the risk of harm if the information is compromised. Among these approaches (in an ascending level of assurance) are:

(1) so-called ''shared secrets'' methods (e.g., personal identification numbers or passwords),

(2) digitized signatures or biometric means of identification, such as fingerprints, retinal patterns, and voice recognition, and

(3) cryptographic digital signatures (discussed in more detail in Section 7).

Combinations of approaches (e.g., digital signatures with biometrics) are also possible and may provide even higher levels of assurance than single approaches by themselves. Deciding which to use in an application depends first upon finding a balance between the risks associated with the loss, misuse, or compromise of the information, and the benefits, costs, and effort associated with deploying and managing the increasingly secure methods to mitigate those risks. Agencies must strike a balance, recognizing that achieving absolute security is likely to be highly improbable in most cases and prohibitively expensive if possible.

Section 2. What is an ''electronic signature?''

a. GPEA defines ''electronic signature'' as follows:

''* * * a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person's approval of the information contained in the electronic message.'' (GPEA, section 1709(1)).

This definition is consistent with other accepted legal definitions of signature. The term ''signature'' has long been understood as including ''any symbol executed or adopted by a party with present intention to authenticate a writing.'' (Uniform Commercial Code, 1–201(39)(1970)). The ''Uniform Electronic Transactions Act,'' recently adopted by the National Conference of Commissioners of Uniform State Laws, and which is being enacted by the States, contains a similar definition (see http://www.nccusl.org). These flexible definitions permit the use of different electronic signature technologies, such as digital signatures, personal identifying numbers, and biometrics (section 7 provides more detail on electronic signature technologies). While it is the case that, for historical reasons, the Federal Rules of Evidence are tailored to support the admissibility of paper-based evidence, the Federal Rules of Evidence have no actual bias against electronic evidence.

b. In enacting GPEA, Congress addressed the legal effect and validity of electronic signatures or other electronic authentication:

''Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, must not be denied legal effect, validity, or enforceability because such records are in electronic form'' (GPEA, section 1707).

Section 3. How should agencies assess the risks, costs, and benefits?

To evaluate the suitability of electronic signature alternatives for a particular application, the agency needs to perform an assessment. The assessment should include a risk analysis, in cases where the sensitivity of the transaction is sufficiently great, and a cost-benefit analysis. The assessment identifies the particular technologies and management controls best suited to minimizing the risk and cost to acceptable levels, while maximizing the benefits to the parties involved. Often parts of the assessment can be quantified, but some factors—particularly the risk analysis usually can only be estimated qualitatively.

Availability of data affects the extent to which risk can be reliably quantified. A quantitative approach to risk analysis generally attempts to estimate the monetary cost of risk compared to the cost of risk reduction techniques based on:

(i) the likelihood that a damaging event will occur,

(ii) the costs of potential losses, and

(iii) the costs of mitigating actions that could be taken.

Reliable data on likelihood and costs may not be available. In this case a qualitative approach can be taken by defining risk in more subjective and general terms such as high, medium, and low. In this regard, qualitative analyses depend more on the expertise, experience, and good judgment of the

Federal managers conducting them than on quantified factors.

The same can be true with other costs and benefits. Some factors, such as the value of deterring fraud, are difficult to quantify. If a new automated system is less secure than an old, paper-based system, attempts to commit fraud or to repudiate transactions may increase. It usually is not possible to quantify in monetary terms attitudes such as increased customer satisfaction and willingness to cooperate with an agency, which may result from electronic processes designed to be user-friendly. However, many costs (design, development, and implementation) and benefits (reduced transaction costs, saved time etc.) can be quantified, as is the case for other IT projects. Clearly, then, the assessment should use a combination of quantitative and qualitative methods to judge the practicability of any electronic transaction method and should include a comprehensive risk analysis when warranted by the sensitivity of the data and/or the transaction.

Those alternatives that minimize risk to an acceptable level should be assessed in terms of net benefit to the agency and the customer in order to determine the electronic signature most appropriate for the transaction. If the net benefits are negative, the agency may determine that using an electronic process is not practicable at this time. In any event, all risk analyses are exercises in managerial judgment.

a. Consider the costs of risk mitigation. The assessment must recognize that neither handwritten signatures nor electronic signatures are totally reliable and secure. Every method of signature, whether electronic or on paper, can be compromised with enough skill and resources, or due to poor security procedures, practices, or implementation. Setting up a very secure, but expensive, automated system may in fact buy only a marginal benefit of deterrence or risk reduction over other alternatives and may not be worth the extra cost. For example, past experience with fraud risks, and a careful analysis of those risks, shows that exposure is often low. If this is the case a less expensive system that substantially deters fraud is warranted, and not an absolutely secure system. Overall, security determination should conform to the Computer Security Act: the level of security should be commensurate with the level of sensitivity of the transaction.

b. Conduct a cost-benefit analysis to determine if an electronic transaction is practicable. The primary goal of a cost-benefit analysis should be to find a cost-effective package of security mechanisms and management controls that can support automated systems using electronic communications. In estimating the cost of any system, agencies should include costs associated with hardware, software, administration, and support of the system, both short-term and long-term. Agencies should consider the following issues when framing the cost-benefit analysis:

(1) Offering more than one way to communicate electronically may enable more people to conduct electronic transactions. If different partners have different skills and differing security concerns, providing a combination of mechanisms will meet the needs of a greater number of possible partners. While admittedly adding cost, offering multiple alternatives can add greater benefit, as well. Under GPEA, the agency must considered this option whenever it expects to receive over 50,000 electronic submittals (per year) of a particular form.

(2) Electronic transactions can impose costs on the transaction partners. Many electronic signature techniques require specialized computer hardware and technical knowledge. The higher these threshold costs are, the higher the participation costs are for users. Higher costs will tend to narrow the range of potential users, which in turn limits the benefits of electronic communications.

(3) Agencies should assess the costs of developing and maintaining electronic transactions. Information technology costs continue to fall and electronic signature techniques continue to evolve. As a result, the agency should periodically redo its risk and cost-benefit analyses on those programs where electronic transactions were initially deemed impracticable to determine whether costs and/or technologies have changed enough so that electronic transactions have become practicable.

(4) If the cost-benefit analysis of a proposed solution indicates that the electronic solution is not cost effective, the agency should seek to identify opportunities to reengineer the underlying process being automated. Occasionally, practices and rules under the control of an agency are based on factors or circumstances that may no longer apply. In these cases new practices and rules should be proposed if the changes do not undermine the objective or impair security, and if the changes lead to a more efficient process.

c. Document the decision. The Computer Security Act gives agency managers the responsibility to select an appropriate combination of technologies, practices, and management controls to minimize risk cost-effectively while maximizing benefits to all parties to the transaction. Agency managers should document these decisions, however qualitative, in the system security plan (see the NIST ''Guide for Developing Security Plans for Information Technology Systems,'' Special Publication 800–18 (December 1998)) for later review and adjustment.

Section 4. What benefits should agencies consider in planning and implementing electronic signatures and electronic transactions?

Benefits from moving to electronic transactions and electronic signatures include reduction in transaction costs for the agency and the transaction partner. Transactions are quicker and it is often easier to access information related to the transaction because it is in electronic form. The electronic form often allows more effective data analysis because the information is easier to access. Better data analysis often improves the operation of the newly electronic transaction. In addition, if many transactions are electronic and data analysis can be done across transactions the benefits can spillover into the rest of the agency as operational awareness of the entire organization is improved. Moreover, business process reengineering should accompany all attempts to facilitate a transaction through information technology. Often the full benefits will be realized only by restructuring the process to take advantage of the technology. Merely moving an existing paper based process to an electronic one is unlikely to reap the maximum benefits from the electronic system.

In order to account for all the benefits associated with electronic transactions, agencies should keep common information technology benefits in mind and look at the benefits realized by other agencies.

a. What are the benefits? Agencies should identify all the benefits of automating program transactions and making those transactions secure, such as:

(1) Increased speed of the transaction. The partner and the agency may spend less time completing the transaction. The quicker speed combined with putting the transaction online allows real-time help to the transaction partner, providing a benefit not found in a paper based transaction.

(2) Increased partner participation and customer satisfaction. Often a decrease in partner transaction costs leads to more partners completing the transaction. In addition, partners tend to

have a more positive view of the process given its speed and ease of use.

(3) Improved record keeping efficiency and data analysis opportunities. If data are easier to access and store then they can enhance program evaluation and expand awareness of the effects of the government program in question.

(4) Increased employee productivity and improved quality of the final product. Electronic transactions tend to have fewer errors because often the system minimizes retyping and automatically detects certain errors. These benefits allow the employees to concentrate more time on other matters.

(5) Greater information benefits to the public. Moving to electronic transactions and electronic signatures often can make the related information more accessible to the public and Freedom of Information Act requests.

(6) Improved security. Designed, implemented, and managed properly, electronic transactions can have fewer opportunities for fraud and more robust security measures than paper and envelope transactions.

(7) Extensive security for highly sensitive information. Even though implementing a more secure electronic signature option often is more expensive initially than implementing less secure alternatives, there could be larger expected benefits if the information being protected is particularly sensitive.

b. What are examples of benefits from electronic signatures and transactions? The following examples highlight agencies' experience in gaining significant benefits from electronic transactions and electronic signatures.

(1) The Internal Revenue Service uses electronic identification to strengthen validation by incorporating electronic links between the user and preexisting data about that user in the agency's records in its TeleFile program. It enables selected taxpayers to file 1040EZs with a touch-tone phone. Taxpayers get Customer Service Numbers (CSNs, i.e., PINs) that they then use to sign their returns and which help to validate their identities to the agency. Even though a CSN is not unique to an individual taxpayer (since it is only five digits long), the IRS authenticates the filer by using other identifying factors, such as the taxpayer's date of birth, taxpayer identification number, and by using additional procedures. This approach is not used over the Internet. Instead, it occurs in short-term connections over telephone lines, an environment where it is comparatively difficult for persons to eavesdrop and steal information or substitute false information.

(2) Taxpayers who transmit their tax returns electronically give high marks to the Internal Revenue Service's electronic filing programs. The American Customer Satisfaction Index (ACSI) shows customer satisfaction scores for IRS e-file exceed those for both the government and retail sectors and rival those of the financial services sector. For electronic tax return filers, the overall ACSI customer satisfaction index is 74. This surpasses the rating among paper return filers and compares with a government-wide satisfaction rating of 68.6. In addition, 78% of customers with electronic filing experiences say they are more satisfied now than two years ago. Other benefits of the electronic filing program include:

(a) Refunds are received in half the time and even faster with Direct Deposit.

(b) Its accuracy rate of over 99% reduces the chance of getting an error notice from the IRS.

(c) It provides an IRS acknowledgment within 48 hours that the return has been received.

(3) The General Services Administration, Federal Technology Service conducted the FTS2001 Procurement in a totally paperless environment. Beginning with the Request for Proposals (RFP) release, which was digitally signed and posted on the internet along with a utility for verifying the signature, through the issuance of the contracts to the winning bidders in an electronic signing ceremony, no paper changed hands at any time during the process. Bids from the offerors were delivered on a single CD, in contrast with the previous FTS2000 solicitation that required several pallets of documentation for each submission. It is estimated that the paper equivalent of this bid would have resulted in a stack of paper approximately 5 stories high. This electronic process resulted in efficiencies and savings to the government of approximately $1,500,000 in time previously required to process paperwork. The paperless process was enabled by issuing each potential bidder a cryptographically-based digital signature certificate housed on a hardware token.

(4) EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the U.S. Securities and Exchange Commission (SEC). Its primary purpose is to increase the efficiency and fairness of the securities market for the benefit of investors, corporations, and the economy by accelerating the receipt, acceptance, dissemination, and analysis of time-sensitive corporate information filed with the agency. Other benefits include:

(a) Elimination of the burdens and delays associated with microfiching 10–12 million pages of information annually in a paper format.

(b) Free SEC web site experiences over half a million hits daily, many from individuals trying to improve the quality of their investment decisions by examining disclosure documents. Prior to EDGAR, individuals simply could not afford the typical, minimum cost of $25 per document.

(c) Full search capability allows improved ability to identify incidents of new or unusual conditions in the reports that are filed and allow rapid access to the information.

(5) The U.S. Customs Service automated much of the information transactions with its import-export partners. It has allowed improved accuracy, efficiency, speed, and the ability to analyze the electronically filed data which has led to enforcement improvements. The Automated Commercial System (ACS) is the system used to track, control, and process all commercial goods imported into the United States. ACS facilitates merchandise processing, significantly cuts costs, and reduces paperwork requirements for both Customs and the trade community.

Section 5. What risk factors should agencies consider in planning and implementing electronic signatures or electronic transactions?

Properly implemented electronic signature technologies can offer degrees of confidence in authenticating identity that are greater than a handwritten signature can offer. These digital tools should be used to control risks in a cost-effective manner. In determining whether an electronic signature is sufficiently reliable for a particular purpose, agency risk analyses need at a minimum to consider the relationships between the parties, the value of the transaction, the risk of intrusion, and the likely need for accessible, persuasive information regarding the transaction at some later date. In addition, agencies should consider any other risks relevant to the particular process. Once these factors are considered separately, an agency should consider them together to evaluate the sensitivity to risk of a particular process, relative to the benefit that the process can bring.

a. What is the relationship between the parties? Agency transactions fall into seven general categories, each of which may be vulnerable to differing security risks:

(1) Intra-agency transactions (i.e., those which remain within the same Federal agency).

(2) Inter-agency transactions (i.e., those between Federal agencies).

(3) Transactions between a Federal agency and state or local government agencies.

(4) Transactions between a Federal agency and a private organization such as: contractor, business, university, non-profit organization, or other entity.

(5) Transactions between a Federal agency and a member of the general public.

(6) Transactions between a Federal agency and a foreign government, foreign private organization, or foreign citizen.

Risks tend to be relatively low in cases where there is an ongoing relationship between the parties. Generally speaking, there will be little risk of a partner later repudiating inter- or intra-governmental transactions of a relatively routine nature, and almost no risk of the governmental trading partner committing fraud. Similarly, transactions between a regulatory agency and a publicly traded corporation or other known entity regulated by that agency can often bear a relatively low risk of repudiation or fraud, particularly where the regulatory agency has an ongoing relationship with, and enforcement authority over, the entity. For the same reasons, risks tend to be relatively low within rulemaking contexts, as all parties can view the submissions of others so the risk of imposture is minimized. Other types of transactions, involving an ongoing relationship between an agency and non-governmental entities and persons, can have varying degrees of risk depending on the nature of the relationship between the parties; the same would apply in the case of those Federal programs in which the ongoing relationship is between entities that are acting (and collecting information under the PRA) on behalf of an agency and such non-governmental entities and persons—e.g., transactions between a lender, guaranty agency, or other institution participating in a Federal loan or financial aid program and another program participant or a member of the general public, such as a borrower or grant recipient. On the other hand, the highest risk of fraud or repudiation is for a one-time transaction between a person and an agency that has legal or financial implications. Agencies should also pay attention to transactions with non-Federal entities, where the agency has a law enforcement responsibility but does not have an ongoing relationship. Transactions between a Federal agency and a foreign entity may entail unique legal risks due to varying national laws and regulations. In all cases, the relative value of the transaction needs to be considered as well.

b. What is the value of the transaction? Agency transactions fall into five general categories, each of which may be vulnerable to different security risks:

(1) Transactions involving the transfer of funds.

(2) Transactions where the parties commit to actions or contracts that may give rise to financial or legal liability.

(3) Transactions involving information protected under the Privacy Act or other agency-specific statutes, or information with national security sensitivity, obliging that access to the information be restricted.

(4) Transactions where the party is fulfilling a legal responsibility which, if not performed, creates a legal liability (criminal or civil).

(5) Transactions where no funds are transferred, no financial or legal liability is involved and no privacy or confidentiality issues are implicated.

Agency risk analyses should attempt to identify the relative value of the type of transaction being automated and factor that against the costs associated with implementing technological and management controls to mitigate risk. Note that the value of the transaction depends on the perspective of the agency and the transaction partner. In general, electronic signatures are least necessary in very low value transactions and need not be used unless specifically required by law or regulation (i.e. #5). Where authentication is necessary, the method of electronic signature should be appropriate to the level of risk.

c. What is the risk of intrusion? The probability of a security intrusion on the transaction can depend on the benefit to the potential attackers and their knowledge that the transaction will take place. Agency transactions fall into three categories:

(1) Regular or periodic transactions between parties are at a higher risk than intermittent transactions because of their predictability, causing higher likelihood that an outside party would know of the scheduled transaction and be prepared to intrude on it.

(2) The value of the information to outside parties could also determine their motivation to compromise the information. Information relatively unimportant to an agency may have high value to an outside party.

(3) Certain agencies, because of their perceived image or mission, may be more likely to be attacked independent of the information or transaction. The act of disruption can be an end in itself.

d. What is the likely need for accessible, persuasive information regarding the transaction at a later point? Agency transactions fall into seven general categories:

(1) Transactions where the information generated will be used for a short time and discarded;

(2) Transactions where the information generated may later be subject to audit or compliance;

(3) Transactions where the information will be used for research, program evaluation, or other statistical analyses;

(4) Transactions where the information generated may later be subject to dispute by one of the parties (or alleged parties) to the transaction;

(5) Transactions where the information generated may later be subject to dispute by a non-party to the transaction;

(6) Transactions where the information generated may later be needed as proof in court;

(7) Transactions where the information generated will be archived later as permanently valuable records.

When analyzing the benefits of converting from paper systems to electronic systems, agencies should reflect on what information would be lost in the conversion, e.g., an envelope containing a postmark and the sender's fingerprints and handwriting, or the specific questions that were asked on a questionnaire. Agencies should determine whether collecting the potentially lost information is truly important and whether an electronic system could cost-effectively collect and store similarly useful information.

In some paper transactions requiring a party's signature, the signature both identifies the party and establishes that party's intent to submit a truthful answer. Sometimes a notary or other third party signs as witness to the signature. When converting these transactions to electronic systems, agencies should ensure that the selected technology and its implementation are able to provide similar functions.

Section 6. What privacy and disclosure issues affect electronic signatures and electronic transactions?

Section 1708 of GPEA limits the use of information collected in electronic signature services to communications with a Federal agency. It directs

agencies and their staff and contractors not to use such information for any purpose other than for facilitating the communication. Exceptions exist if the person (or entity) that is the subject of the information provides affirmative consent to the additional use of the information, or if such additional use is otherwise provided by law. Accordingly, agencies should follow several privacy principles:

a. Electronic signatures should only be required where needed. Many transactions do not need, and should not require, identifying or other information about an individual. For example, individuals generally should not be required to provide personal information in order to download public documents.

b. When electronic signatures are required for a transaction, agencies should not collect more information from the user than is required for the application of the electronic signature. When appropriate, agencies are encouraged to use methods of electronic signing that do not require individuals to disclose their identity. This includes the ability of individuals in a group to be identified by a group identifier rather than an individual identifier if the only information needed to authenticate is the fact that the individual is a member of the group.

c. Users should be able to decide how, when, and what type of electronic authentication to use of those made available by the agency. If none are acceptable the user should be able to opt out to a paper process. If a user wants a certain mechanism for authentication to apply only to a single agency or to a single type of transaction, the user's desires should be honored, if practicable. Conversely, if the user wishes the authentication to work with multiple agencies or for multiple types of transactions, that should also be permitted where practicable. Specifically, it should be consistent with how the agency employs such means of authentication and with relevant statute and regulation and only if it conforms to practicable costs and risks.

d. Agencies should ensure, and users should be informed, that information collected for the purpose of issuing or using electronic means of authentication will be managed and protected in accordance with applicable requirements under the Privacy Act, the Computer Security Act, and any agency-specific statute mandating the protection of such information, as well as with any relevant Executive Branch and agency specific privacy policies.

Section 7. What are current electronic signature technologies?

Questions regarding the following should be directed to the Department of Commerce. This section addresses two categories of security: (1) Non-cryptographic methods of authenticating identity; and (2) cryptographic control methods. The non-cryptographic approach relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application. Cryptographic controls may be used for multiple applications, if properly managed, and may encompass both authentication and encryption services. A highly secure implementation may combine both categories of technologies. The spectrum of electronic signature technologies currently available is described below.

a. Non-Cryptographic Methods of Authenticating Identity. (1) *Personal Identification Number (PIN) or password:* A user accessing an agency's electronic application is requested to enter a ''shared secret'' (called ''shared'' because it is known both to the user and to the system), such as a password or PIN. When the user of a system enters her name, she also enters a password or PIN. The system checks that password or PIN against data in a database to ensure its correctness and thereby ''authenticates'' the user. If the authentication process is performed over an open network such as the Internet, it is usually essential that at least the shared secret be encrypted. This task can be accomplished by using a technology called Secure Sockets Layer (SSL), which uses a combination of public key technology and symmetric cryptography to automatically encrypt information as it is sent over the Internet by the user and decrypt it before it is read by the intended recipient. SSL currently is built into almost all popular Web browsers, in such a fashion that its use is transparent to the end user. Assuming the password is protected during transmission, as described above, impersonating the user requires obtaining the user's password. This may be relatively easy if users do not follow appropriate guidelines for password creation and use. Agencies should establish adequate guidelines for password creation and protection.

(2) *Smart Card:* A smart card is a plastic card the size of a credit card containing an embedded integrated circuit or ''chip'' that can generate, store, and/or process data. It can be used to facilitate various authentication technologies also embedded on the same card. By having different authentication choices the user can pick the authentication technique that meets but does not exceed the information requirement for the transaction. A user inserts the smart card into a card reader device attached to a computer or network input device. Information from the card's chip is provided to the computer only when the user also enters a PIN, password, or biometric identifier recognized by the card. Thus, the user authenticates to the card, making available electronic credentials which can then be used by the computer or network to strongly authenticate the user for transactions. This method offers far greater security than the typical use of a PIN or password, because the shared secret is between the user and the card, not with a remote server or network device. Moreover, to impersonate the user requires possession of the card as well as knowledge of the shared secret that activates the electronic credentials on the card. Thus, proper security requires that the card and the PIN or password used to activate it be kept separate. This is not a concern if a biometric is used for the latter purpose.

(3) *Digitized Signature:* A digitized signature is a graphical image of a handwritten signature. Some applications require an individual to create his or her hand-written signature using a special computer input device, such as a digital pen and pad. The digitized representation of the entered signature may then be compared to a previously-stored copy of a digitized image of the handwritten signature. If special software judges both images comparable, the signature is considered valid. This application of technology shares the same security issues as those using the PIN or password approach, because the digitized signature is another form of shared secret known both to the user and to the system. The digitized signature can be more reliable for authentication than a password or PIN because there is a biometric component to the creation of the image of the handwritten signature. Forging a digitized signature can be more difficult than forging a paper signature since the technology digitally compares the submitted signature image with the known signature image, and is better than the human eye at making such comparisons. The biometric elements of a digitized signature, which help make it unique, are in measuring how each stroke is made—duration, pen pressure, etc. As with all shared secret techniques, compromise of a digitized signature image or characteristics file

could pose a security (impersonation) risk to users.

(4) *Biometrics:* Individuals have unique physical characteristics that can be converted into digital form and then interpreted by a computer. Among these are voice patterns (where an individual's spoken words are converted into a special electronic representation), fingerprints, and the blood vessel patterns present on the retina (or rear) of one or both eyes. In this technology, the physical characteristic is measured (by a microphone, optical reader, or some other device), converted into digital form, and then compared with a copy of that characteristic stored in the computer and authenticated beforehand as belonging to a particular person. If the test pattern and the previously stored patterns are sufficiently close (to a degree which is usually selectable by the authenticating application), the authentication will be accepted by the software, and the transaction allowed to proceed. Biometric applications can provide very high levels of authentication especially when the identifier is obtained in the presence of a third party to verify its authenticity, but as with any shared secret, if the digital form is compromised, impersonation becomes a serious risk. Thus, just like PINs, such information should not be sent over open networks unless it is encrypted. Moreover, measurement and recording of a physical characteristic could raise privacy concerns where the biometric identification data is shared by two or more entities. Further, if compromised, substituting a different, new biometric identifier may have limitations (e.g., you may need to employ the fingerprint of a different finger). Biometric authentication is best suited for access to devices, e.g. to access a computer hard drive or smart card, and less suited for authentication to software systems over open networks.

b. Cryptographic Control. Creating electronic signatures may involve the use of cryptography in two ways: symmetric (or shared private key) cryptography, or asymmetric (public key/private key) cryptography. The latter is used in producing digital signatures, discussed further below.

(1) *Shared Symmetric Key Cryptography*

In shared symmetric key approaches, the user signs a document and verifies the signature using a single key (consisting of a long string of zeros and ones) that is not publicly known, or is secret. Since the same key does these two functions, it must be transferred from the signer to the recipient of the message. This situation can undermine confidence in the authentication of the user's identity because the symmetric key is shared between sender and recipient and therefore is no longer unique to one person. Since the symmetric key is shared between the sender and possibly many recipients, it is not private to the sender and hence has lesser value as an authentication mechanism. This approach offers no additional cryptographic strength over digital signatures (see below). Further, digital signatures avoid the need for the shared secret.

(2) *Public/Private Key (Asymmetric) Cryptography—Digital Signatures*

(a) To produce a digital signature, a user has his or her computer generate two mathematically linked keys—a private signing key that is kept private, and a public validation key that is available to the public. The private key cannot be deduced from the public key. In practice, the public key is made part of a ''digital certificate,'' which is a specialized electronic file digitally signed by the issuer of the certificate, binding the identity of the individual to his or her private key in an unalterable fashion. The whole system that implements digital signatures and allows them to be used with specific programs to offer secure communications is called a Public Key Infrastructure, or PKI.

(b) A ''digital signature'' is created when the owner of a private signing key uses that key to create a unique mark (the signature) on an electronic document or file. The recipient employs the owner's public key to validate that the signature was generated with the associated private key. This process also verifies that the document was not altered. Since the public and private keys are mathematically linked, the pair is unique: only the public key can validate signatures made using the corresponding private key. If the private key has been properly protected from compromise or loss, the signature is unique to the individual who owns it, that is, the owner cannot repudiate the signature. In relatively high-risk transactions, there is always a concern that the user will claim someone else made the transaction. With public key technology, this concern can be mitigated. To claim he did not make the transaction, the user would have to feign loss of the private key. By creating and holding the private key on a smart card or an equivalent device, and by using a biometric mechanism (rather than a PIN or password) as the shared secret between the user and the smart card for unlocking the private key to create a signature this concern can be mitigated. In other words, combining two or three distinct electronic signature technology approaches in a single implementation can enhance the security of the interaction and lower the potential for fraud to almost zero. Furthermore, by establishing clear procedures for a particular implementation of digital signature technology, so that all parties know what the obligations, risks, and consequences are, agencies can also strengthen the effectiveness of a digital signature solution.

The reliability of the digital signature is directly proportional to the degree of confidence one has in the link between the owner's identity and the digital certificate, how well the owner has protected the private key from compromise or loss, and the cryptographic strength of the methodology used to generate the public-private key pair. The cryptographic strength is affected by key length and by the characteristics of the algorithm used to encrypt the information. Further information on digital signatures can be found in ''Access with Trust'' (September 1998) *(http://gits-sec.treas.gov/).*

c. Technical Considerations of the Various Electronic Signature Alternatives. (1) To be effective, each of these methods requires agencies to develop a series of policy documents that provide the important underlying framework of trust for electronic transactions and which facilitate the evaluation of risk. The framework identifies how well the user's identity is bound to his authenticator (e.g., his password, fingerprint, or private key). By considering the strength of this binding, the strength of the mechanism itself, and the sensitivity of the transaction, an agency can determine if the level of risk is acceptable. If an agency has experience with the technology, existing policies and documents may be available for use as guidance. Where the technology is new to an agency, this may require additional effort.

(2) While digital signatures (i.e. public key/private key) are generally the most certain method for assuring identity electronically, the policy documents must be established carefully to achieve the desired strength of binding. The framework must identify how well the signer's identity is bound to his or her public key in a digital certificate (identity proofing). The strength of this binding depends on the assumption that only the owner has sole possession of the unique private key used to make signatures that are validated with the public key. The strength of this binding

also reflects whether the private key is placed on a highly secure hardware token, such as a smart card, or is encapsulated in software only; and how difficult it is for a malefactor to deduce the private key using cryptographic methods (which depends upon the key length and the cryptographic strength of the key-generating algorithm).

A Public Key Infrastructure (PKI) is one mechanism to support the binding of public keys with the user's identity. A PKI can provide the entire policy and technical framework for the systematic and diligent issuance, management and revocation of digital certificates, so that users who wish to rely on someone's certificate have a firm basis to check that the certificate has not been maliciously altered, and to confirm that it remains active (i.e., has not been revoked because of loss or compromise of the corresponding private key). This same infrastructure provides the basis for interoperability among different agencies or entities, so that a person's digital certificate can be accepted for transactions by organizations external to the one that issued it.

(3) By themselves, digitized (not digital) signatures, PINs, biometric identifiers, and other shared secrets do not directly bind identity to the contents of a document as do digital signatures which actually use the document information to make the signature. For shared secrets to bind the user's identity to the document, they must be used in conjunction with some other mechanism. Biometric identifiers such as retinal patterns used in conjunction with digital signatures can offer far greater proof of identify than pen and ink signatures.

(4) While not as robust as biometric identifiers and digital signatures, PINs have the decided advantage of proven customer and citizen acceptance, as evidenced by the universal use of PINs for automated teller machine transactions. PINs combined with encrypted Internet sessions, particularly through the use of Secure Sockets Layer technology on the World Wide Web, are very popular for retail consumer transactions requiring credit card or other personal authenticating information. This may well be suited for a variety of government applications. Also, secure Web browsers are increasingly being designed to accommodate digital signatures, making this approach a possible interim step towards implementing the more robust authentication provided by digital signatures.

(5) It is important to remember that technical factors are but one aspect to be considered when an agency plans to implement electronic signature-based applications. Other important aspects are considered in the following sections.

Section 8. How should agencies implement electronic signatures and electronic transactions?

After the agency has conducted the assessment and identified an appropriate electronic signature technology alternative that may be used to secure an automated business process, the agency will proceed to implement this decision. For any electronic transaction, agencies should collect and record adequate information regarding the content, process, and identities of the parties involved. In doing so, agencies should consider the following:

a. Build from a policy framework. GPEA applies to interactions between outside entities and the Federal government, as well as to transactions and record keeping required by parties under Federal programs. Accordingly, agencies should consider whether their policies or programmatic regulations support the use and enforceability of electronic signature alternatives to handwritten signatures as well as to electronic record keeping under Federal programs. If necessary, agencies should develop a strategy to make any revisions needed to achieve this goal. In addition, by clearly informing the transaction partners that electronic signatures and records will be acceptable and used for enforcement purposes, their legal standing is enhanced. Several agencies have already chosen to promulgate policies or regulations on this issue, including:

(1) Securities and Exchange Commission (17 C.F.R. Part 232), electronic regulatory filings;

(2) Environmental Protection Agency (55 FR 31,030 (1990)), policy on electronic reporting;

(3) Food and Drug Administration (21 C.F.R. Part 11), electronic signatures and records;

(4) Internal Revenue Service (Treasury Reg. 301.6061–1), signature alternatives for tax filings;

(5) Federal Acquisition Regulation (48 C.F.R. Parts 2 and 4), electronic contracts;

(6) General Services Acquisition Regulation (48 C.F.R. Part 552.216–73), electronic orders;

(7) Federal Property Management Regulations (41 C.F.R. Part 101–41), electronic bills of lading.

(8) Administrative Committee of the Federal Register (1 C.F.R. Part 18.7), electronic signatures on documents submitted for publication in the **Federal Register**.

(9) Commodity Futures Trading Commission (17 C.F.R. Part 1.4 and Part 1.3(tt)), electronic signatures for filings.

When specifying the requirements for electronic record keeping by regulated entities or government business partners (e.g. contractors or grantees), particularly the maintenance of electronic forms pertaining to employees by employers, agencies should consult the ''Performance Guideline for the Legal Acceptance of Records Produced by Information Technology Systems,'' developed by the Association for Information and Image Management (ANSI/AIIM TR31). This set of documents offers suggestions for maximizing the likelihood that electronically filed and stored records will be accorded full legal recognition. If an agency chooses to use digital signature technology, a regulation might specify that each individual will be issued a unique digital signature certificate to use, agree to keep the private key confidential, agree to accept responsibility for anything that is submitted using that key, or accept other conditions under which the agency will accept electronic submissions.

b. Where necessary, use a mutually understood, signed agreement between the person or entity submitting the electronically-signed information and the receiving Federal agency. As a matter of efficiency, arrangements with large numbers of customers may be best accomplished by setting forth an agency's terms and conditions in a policy or regulation. Arrangements with smaller numbers of customers may lend themselves to one or more agreements, using a document referred to as a ''terms and conditions'' agreement. These agreements can ensure that all conditions of submission and receipt of data electronically are known and understood by the submitting parties. This is particularly the case where terms and conditions are not spelled out in agency programmatic regulations.

c. Minimize the likelihood of repudiation. Agencies should develop well-documented mechanisms and procedures to tie transactions to an individual in a legally binding way. For example, the integrity of even the most secure digital signature rests on the continuing confidentiality of the private key, so instituting procedures for ensuring the confidentiality of the private key would be in an agency's interest. Similarly, in the case of electronic signatures based on the use of shared secrets like PINs or passwords, the integrity of the transaction depends on the user not disclosing the shared secret, so an agency should have

procedures for encouraging the maintenance of the PIN's integrity. If a defendant is later charged with a crime based on an electronically signed document, he or she would have every incentive to show a lack of control over (or loss of) the private key or PIN, or in the case of a PIN, that the government failed to protect the PIN on its computer system. Indeed, if that defendant plans to commit fraud, he or she may intentionally compromise the secrecy of the key or PIN, so that the government would later have a more difficult time uniquely linking him or her to the electronic transaction. Promulgating policies and procedures that ensure the integrity of security tools helps counter such fraudulent attempts.

Thus, transactions which appear to be at high risk for fraud, e.g., one-time high-value transactions with persons not previously known to an agency, may require extra safeguards or may not be appropriate for electronic transactions. One way to mitigate this risk might be to require that private keys be generated and kept on hardware tokens, making possession of the token a critical requirement. Another way to guard against fraud is to include other identifying data in the transaction that links the key or PIN to the individual, preferably something not readily available to others.

It is also important to establish that the user of the digital signature or PIN/password is fully aware of obligations he or she is agreeing to by signing at the time of signature. This can be ensured by programming appropriate ceremonial banners into the software application that alert the individual of the gravity of the action she is about to undertake. The presence of such banners can later be used to demonstrate to a court that the user was fully informed of and aware of what he or she was signing.

d. Carefully control access to the electronic data, after receipt, yet make it available in a meaningful and timely fashion. Security measures should be in place that ensure that no one is able to alter a transaction, or substitute something in its place, once it has been received by the agency unless the alteration is a valid correction contained in an electronically certified re-transmission. This can be achieved with a digital signature because it binds the identity of the individual making the signature to the entire document, so any subsequent change would be detected. Thus, the receiving agency needs to take prudent steps to control access to the electronic transaction through such methods as limiting access to the computer database containing the transaction, and performing processing with the data using copies of the transaction rather than the original. The information may be needed for audits, disputes, or court cases many years after the transaction itself took place. Agencies should make plans for storing data and providing meaningful and timely access to it for as long as such access will be necessary.

e. Ensure the ''Chain of Custody.'' Electronic audit trails must provide a chain of custody for the secure electronic transaction that identifies sending location, sending entity, date and time stamp of receipt, and other measures used to ensure the integrity of the document. These trails must be sufficiently complete and reliable to validate the integrity of the transaction and to prove, (a) that the connection between the submitter and the receiving agency has not been tampered with, and (b) how the document was controlled upon receipt.

f. Consider providing an acknowledgment of receipt. The agency's system for receiving electronic transactions may be required by statute to have a mechanism for acknowledging receipt of transactions received and acknowledging confirmation of transactions sent, with specific indication of the party with whom the agency is dealing.

g. Obtain legal counsel during the design of the system. Collection and use of electronic data may raise legal issues, particularly if it is information that bears on the legality of the process, may eventually be needed for proof in court, or involves questions of privacy, confidentiality, or liability.

Section 9. Summary of the Procedures and Checklist

To summarize the process and restate the principles that agencies should employ to evaluate authentication mechanisms (electronic signatures) for electronic transactions and documents, the following steps apply:

a. Examine the current business process that is being considered for conversion to employ electronic documents, forms or transactions, identifying customer needs and demands as well as the existing risks associated with fraud, error or misuse.

b. Identify the benefits that may accrue from the use of electronic transactions or documents.

c. Consider what risks may arise from the use of electronic transactions or documents. This evaluation should take into account the relationships of the parties, the value of the transactions or documents, and the later need for the documents.

d. Consult with counsel about any agency specific legal implications about the use of electronic transactions or documents in the particular application.

e. Evaluate how each electronic signature alternative may minimize risk compared to the costs incurred in adopting an alternative.

f. Determine whether any electronic signature alternative, in conjunction with appropriate process controls, represents a practicable trade-off between benefits on the one hand and cost and risk on the other. If so, determine, to the extent possible at the time, which signature alternative is the best one. Document this determination to allow later reevaluation.

g. Develop plans for retaining and disposing of information, ensuring that it can be made continuously available to those who will need it, for managerial control of sensitive data and accommodating changes in staffing, and for ensuring adherence to these plans.

h. Develop management strategies to provide appropriate security for physical access to electronic records.

i. Determine if regulations or policies are adequate to support electronic transactions and record keeping, or if ''terms and conditions'' agreements are needed for the particular application. If new regulations or policies are necessary, disseminate them as appropriate.

j. Seek continuing input of technology experts for updates on the changing state of technology and the continuing advice of legal counsel for updates on the changing state of the law in these areas.

k. Integrate these plans into the agency's strategic IT planning and regular reporting to OMB.

l. Perform periodic review and re-evaluation, as appropriate.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24404; 812–11734]

Marshall Funds, Inc. et al.; Notice of Application

April 25, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit certain registered management investment companies (a) To pay to an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions, and (b) to permit the investment companies to deposit their uninvested cash and cash collateral received from securities lending transactions in one or more joint accounts that invest in short-term investments.

APPLICANTS: Marshall Funds, Inc. (''Marshall Funds''), M&I Management Corp. (the ''Adviser'') and Marshall & Ilsley Trust Company (''M&I Trust'').

FILING DATES: The application was filed on July 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549–0609. Applicants, c/o Janet D. Olsen, Esq., Bell, Boyd & Lloyd LLC, Three First National Plaza, 70 West Madison Street, Chicago, Illinois 60602.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Marshall Funds, a Wisconsin corporation, is registered under the Act as an open-end management investment company and consists of eleven separate series. The Adviser, a wholly-owned subsidiary of Marshall & Ilsley Corporation (''M&I Corp.''), a bank holding company, is registered under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to each series of Marshall Funds. M&I Trust, also a wholly-owned subsidiary of M&I Corp., is the custodian for Marshall Funds. Applicants also request relief for each future series of Marshall Funds and any other registered management investment companies or series thereof, whether currently existing or organized in the future, that are advised or subadvised by the Adviser, or an entity controlling, controlled by, or under common control with, the Adviser (together, the ''Adviser'') (collectively, ''Future Funds''). Marshall Funds and the Future Funds are collectively referred to as the ''Funds''.[1]

2. Each of the Funds is, or will be, permitted by its investment objectives, policies, and restrictions to lend its portfolio securities. Several of the Funds currently participate in a securities lending program (the ''Program'') administered by M&I Trust, which acts as lending agent. Under the Program, M&I Trust enters into agreements with certain unaffiliated borrowers that have been pre-approved by the Fund or the Adviser (''Borrowers'') that wish to borrow securities owned by a Fund. Applicants represent that the duties performed by M&I Trust as lending agent will not exceed those set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

3. With respect to loans that are collateralized by cash (''Cash Collateral''), the Borrower is entitled to receive a fixed fee based on the amount of Cash Collateral. The Fund is compensated on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's fee. In the case of collateral other than cash, the Fund receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities specified in the loan agreement. Applicants seek relief to permit the funds to pay, and M&I Trust to accept, fees based on a share of the revenues generated from securities lending transactions.

4. Securities lending guidelines adopted by each Fund authorize and instruct M&I Trust, at the direction of the Adviser, to invest Cash Collateral on behalf of the Fund in investment options pre-approved by the Fund or the Adviser. The Funds also may be expected to have uninvested cash (''Uninvested Cash''), which may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors (Uninvested Cash, together with Cash Collateral, ''Cash Balances'').

5. Applicants propose to deposit Cash Balances into one or more joint accounts (''Joint Accounts'') established at M&I Trust for the purpose of investing in one or more of the following: (a) repurchase agreements ''collateralized fully'' as defined in rule 2a–7 under the Act,[2] (b) U.S. dollar-denominated commercial paper (including securities issued or backed by the U.S. Government or its agencies or instrumentalities), and (c) any other short-term money market instruments that constitute ''Eligible Securities'' (as defined in rule 2a–7 under the Act) (collectively, ''Short-Term Investments'').

6. Any repurchase agreements entered into through a Joint Account will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the commission sets forth guidelines with respect to other Short-Term Investments made through the Joint Accounts, the investments will comply with those guidelines.

7. Each Fund will invest through a Joint Account only in conformity with its own investment objectives, policies and restrictions. The Adviser will have sole responsibility for determining a Fund's participation in a joint Account,

[1] The requested relief would apply to Funds that are subadvised by the Adviser only to the extent that the Adviser manages the Cash Balances (as later defined) of those Funds. All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing or future entity that will rely on the relief in the future will comply with the terms and conditions contained in the application.

[2] The Joint Accounts will enter into ''hold-in-custody'' repurchase agreements (i.e., repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investments.

subject to standards and procedures established by the Fund's board of directors (''Board''). Neither the Adviser nor M&I Trust will receive any additional fees from the Funds for the administration of the Joint Accounts.

Applicants' Legal Analysis

A. Lending Agent Fees

1. Section 17(b) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

2. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person and, if the other person is an investment company, its investment adviser. The adviser is an affiliated person of each Fund. Because M&I Trust and the Adviser are under the common control of M&I Corp., M&I Trust is an affiliated person of an affiliated person of each Fund. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit each Fund to pay, and M&I to accept, fees based on a share of the revenues generated from securities lending transactions.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with M&I Trust, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of M&I Trust as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the directors who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Disinterested Directors or Trustees'') will determine that (i) the contract with M&I Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by M&I Trust are required for the Fund; (iii) the nature and quality of the services provided by M&I Trust are at least equal to those provided by others offering the same or similar services; and (iv) the fees charged by M&I Trust are fair and reasonable in light of the usual and customary charges imposed by other for services of the same nature and quality.

(b) Each Fund's contract with M&I Trust for lending agent services will be reviewed at least annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Director or Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby M&I Trust will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Disinterested Directors or Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

B. Investment of Cash Balances in the Joint Accounts

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that the Funds, by participating in the proposed Joint Accounts, M&I Trust, by administering the proposed Joint Accounts, and the Adviser, by acting as the adviser for the Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1 under the Act. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to permit them to participate in the proposed Joint Accounts.

2. Applicants submit that the requested relief meets the standards of rule 17d–1 for issuance of an order. Each Fund will participate in any Joint Account on the same basis as every other Fund, subject to and in conformity with its own investment objectives, polices, and restrictions. Each Fund's liability on any Short-Term Investment would be limited to its own interest in such investment. Applicants also assert that the proposed method of operating the Joint Accounts will not result in any conflicts of interest among any of the Funds, M&I Trust and the Adviser.

3. Applicants state that the operation of the Joint Accounts could result in certain benefits. Applicants state that, although M&I Trust may gain some benefit from the administrative convenience of the Funds investing in Short-Term Investments on a joint basis, and may experience some reduction in clerical costs, the Funds will be the primary beneficiaries due to increase efficiencies realized through use of the Joint Accounts, the possible increase in rates of return available, and, for some Funds, the opportunity to invest in Short-Term Investments

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Securities Lending

1. The securities lending program of each Fund will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of the Disinterested Directors or Trustees, shall be required for the initial and subsequent approvals of M&I Trust's service as lending agent for the Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Fund, and for any periodic review of loan transactions for which M&I Trust acted as lending agent pursuant to the Program.

B. Joint Accounts

1. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with M&I Trust

except that Cash Balances from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Fund of its Cash Balances.

2. Short-Term Investments that are repurchase agreements will be ''collateralized fully'' as defined in rule 2a–7 under the Act and all Short-Term Investments will have a remaining maturity of 397 days or less as calculated in accordance with Rule 2a–7 under the Act. Uninvested Cash in a Joint Account will be invested in Short-Term Investments with remaining maturities of 90 days or less, or if repurchase agreements, with remaining maturities of 60 days or less.

3. All Short-Term Investments invested in through the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission releases, rules or orders.

4. Each Fund that is a money market fund will use the dollar-weighted average maturity of the Short-Term Investments in the Joint Accounts in which the Fund has an interest for the purpose of computing that Fund's average portfolio maturity with respect to the portion of the assets held by it in the Joint Account.

5. To ensure that there will be no opportunity for any Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its share of the entire balance at any time, provided that the Adviser determines that such draw down would have no significant adverse impact on any other Fund in that Joint Account. Each Fund's decision to invest through the Joint Accounts would be solely at its option, and no Fund will be obligated to invest in a Joint Account or maintain a minimum balance in a Joint Account. In addition, each Fund will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Adviser will administer the investment of Cash Balances in, and the operation of, the Joint Accounts as part of its general duties under its advisory agreements with the Funds and neither M&I Trust nor the Adviser will receive additional or separate fees for administering the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

8. The Board for each Fund investing in Short-Term Investments through the Joint Accounts will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that the requirements of the requested order will be met. In addition, not less frequently than annually, the Board will evaluate the Joint Account arrangements, will determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and will authorize a Fund's continued participation in the Joint Accounts only if the Board determines that there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

9. Investment in a Joint Account by a particular Fund will be consistent with the Fund's investment objectives and policies.

10. The Adviser and M&I Trust will maintain records documenting, for any given day, each Fund's aggregate investment in a Joint Account and each Fund's pro rata share of each Short-Term Investment made through such Joint Account. The records maintained for each Fund shall be maintained in conformity with section 31 of the Act and the rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) The Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Funds in the Joint Account because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. Any Short-Term Investment (or any fractional portion thereof), however, may be sold on behalf of some or all of the Funds prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Funds and the transaction will not adversely affect other Funds participating in that Joint Account. In no case would an early termination by less than all Funds be permitted if it would reduce the principal amount or yield received by other Funds in a particular Joint Account or otherwise adversely affect the other Funds. Each Fund in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either case, such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if the Short-Term Investment or fractional interest therein cannot be sold pursuant to the preceding condition.

13. Every Fund in the Joint Accounts will not necessarily have its Cash Balances invested in every Short-Term Investment. However, to the extent that a Fund's Cash Balances are applied to a particular Short-Term Investment, the Fund will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such Short-Term Investment purchased with Cash Balances contributed by the Fund.

14. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Funds at M&I Trust. Each Fund may deposit daily all or a portion of its Cash Balances into the Joint Accounts. Each Fund whose regular custodian is a custodian other than M&I Trust Fund and that wishes to participate in a Joint Account would appoint M&I Trust as a sub-custodian for the limited purposes of: (a) Receiving and disbursing Cash Balances; (b) holding any Short-Term Investments; and (c) holding any collateral received from a transaction effected through a Joint Account. All Funds that so appoint M&I Trust will have taken all necessary actions to authorize M&I Trust as its legal custodian, including all actions required under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10857 Filed 5–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24403; 812–11440]

SSgA Funds and State Street Bank and Trust Company; Notice of Application

April 25, 2000.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds and/or short-term bond funds.

Applicants: SSgA Funds, on behalf of its series SSgA Money Market Fund, SSgA U.S. Government Money Market Fund, SSgA S&P 500 Index Fund, SSgA Small Cap Fund, SSgA Matrix Equity Fund, SSgA Active International Fund, SSgA International Pacific Index Fund, SSgA Bond Market Fund, SSgA Yield Plus Fund, SSgA U.S. Treasury Money Market Fund, SSgA U.S. Treasury Obligations Fund, SSgA Growth and Income Fund, SSgA Intermediate Fund, SSgA Emerging Markets Fund, SSgA Prime Money Market Fund, SSgA Tax Free Money Market Fund, SSgA Tuckerman Active REIT Fund, SSgA Life Solutions Income and Growth Fund, SSgA Life Solutions Balanced Fund, SSgA Life Solutions Growth Fund, SSgA Special Equity Fund, SSgA High Yield Bond Fund, SSgA International Growth Opportunities Fund, SSgA Aggressive Equity Fund, and SSgA IAM SHARES Fund (each a ''Fund'' and collectively, the ''Funds''), and State Street Bank and Trust Company (''State Street'').

Filing Dates: The application was filed December 23, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing Nor Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, SSgA, Two International Place, 35th Floor, Boston MA 02110, State Street, 225 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. SSgA Funds, organized as a Massachusetts business trust, is registered under the Act as an open-end management investment company. Each Fund is a series of SSgA Funds and has a separate investment objective and policies. State Street serves as the investment adviser for each of the Funds. State Street is a bank and is not required to register as an investment adviser under the Investment Advisers Act of 1940. Applicants also request relief for all other registered management investment companies and series thereof now or hereafter existing for which State Street, or a person controlling, controlled by, or under common control with State Street (collectively, ''State Street''), acts as investment adviser (together with the Funds, the ''Funds'').[1]

2. Each Fund (''Participating Fund'') has, or may be expected to have, cash that has not been invested in portfolio securities (''Uninvested Cash'') held by its custodian bank. Such Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Certain of the Participating Funds also may participate in a securities lending program under which a Participating Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request relief to permit Participating Funds to use Cash Balances to purchase shares of one or more of the funds that are money market funds or short-term bond funds (the ''Central Funds''), and the Central Funds to sell shares to and purchase shares from the Participating Funds (the ''Proposed Transactions''). Certain of the Central Funds are money market funds operating pursuant to rule 2a–7 under the Act. The other Central Funds are or will be short-term bond funds that seek high current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average maturity of three years or less (the ''Short-Term Bond Funds.'') Applicants believe that the Participating Funds' investment in the Central Funds may reduce the risk of counterparty default on repurchase agreements and the market risk associated with direct purchases of short-term obligations, while providing high current money market rates of return, ready liquidity, and increased diversity of holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represented more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company sell its securities to another investment company if the sale will cause the acquiring company to own

[1] All investment companies that currently intend to rely on the requested relief have been named as applicants, and any existing or future registered management investment company or series thereof that relies on the requested relief in the future will do so only in accordance with the terms and conditions of the application.

more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Participating Fund to invest Cash Balances in the Central Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Central Fund will maintain a highly liquid portfolio, a Participating Fund will not be in a position to gain undue influence over a Central Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' (''NASD'') Conduct Rules) or, if such shares are subject to any such distribution fee or service fee, State Street will waive its advisory fee for each Participating Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Participating Fund. In connection with approving any advisory contract for a Participating Fund, the Participating Fund's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees'') will consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser as a result of the investment of Uninvested Cash in the Central Funds. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that the Participating Funds and Central Funds may share a common investment adviser and a common Board. Therefore, each Participating Fund and each Central Fund may be an affiliated person of every other Fund. In addition, applicants state that a Participating Fund may become an affiliated person of a Central Fund by owning more than 5% of the outstanding voting securities of a Central Fund. Accordingly, applicants seek an exemption from the provisions of section 17(a) to permit the sale of shares of the Central Funds to the Participating Funds and the redemption of such shares by the Central Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of person, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the terms of the Proposed Transactions are fair and reasonable, and do not involve overreaching because the consideration paid and received on the sale and redemption of shares of a Central Fund will be based on the Central Fund's net asset value per share. In addition, under the Proposed Transactions, the Participating Funds will retain their ability to invest their Cash Balances directly in money market instruments and other short-term obligations, as permitted by each Participating Fund's investment objectives and policies. Applicants state that each of the Central Funds reserves the right to discontinue selling shares to any of the Participating Funds if its Board determines that such sales would adversely affect its portfolio management and operations. Applicants note that the investment of assets of the Participating Funds in shares of the Central Funds will be affected in accordance with each Participating Fund's investment restrictions and will be consistent with each Participating Fund's policies as set forth in its registration statement.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibits an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Participating Funds and the Central Funds, by participating in the Proposed Transactions, and State Street, by managing the Proposed Transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transactions, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Participating Funds in shares of the Central Funds would be indistinguishable from any other shareholder account maintained by the Central Fund and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a 12b–1 plan, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the NASD), or if such shares are subject to any such distribution fee or service fee, State Street will waive its advisory fee for each Participating Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Participating Fund.

2. If State Street collects a fee from any Central Fund for acting as its investment adviser with respect to

assets invested by a Participating Fund, before the next meeting of the Board of that Participating Fund is held for the purpose of voting on the Participating Fund's advisory contract pursuant to section 15 of the Act, State Street will provide the Board with specific information regarding the approximate cost to State Street for, or portion of the advisory fee under the existing advisory contract attributable to, managing the assets of the Participating Fund that can be expected to be invested in such Central Funds. Before approving the Participating Fund's advisory contract pursuant to section 15, the Board, including a majority of the Disinterested Trustees shall consider to what extent, if any, the advisory fees charged to the Participating Fund by State Street should be reduced to account for reduced services provided to the Participating Fund by State Street as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Participating Funds will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in its prospectus(es) and statement(s) of additional information. Participating Funds that are money market funds will not acquire shares of any Central Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. Each Participating Fund, each Central Fund, and any future Fund that may rely on the order shall be advised by State Street.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10856 Filed 5–1–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42723; File No. SR–NYSE–99–48]

Notice of Extension of Comment Period for Issues Relating to Market Fragmentation

April 26, 2000.

On December 10, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Exchange Rule 390. The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] The release publishing notice of the proposed rule change also included a Commission request for public comment on issues relating to market fragmentation (''Concept Release''). The comment period relating to the rescission of Exchange Rule 390 expired on March 20, 2000; the comment period for issues related to market fragmentation is scheduled to expire on April 28, 2000.

The Commission has decided to extend for two weeks until May 12, 2000, the comment period for issues related to market fragmentation. The Concept Release requested comment on a wide range of issues, including whether fragmentation is now, or may become in the future, a problem that significantly detracts from the fairness and efficiency of the U.S. markets. In addition, the Concept Release requested comment on six potential options for addressing fragmentation. These issues are very complex, and the Commission believes that it will be helpful for commenters to have two extra weeks in which to prepare and submit their views.

In this regard, the Commission urges commenters not to limit their attention to a single option raised in the Concept Release, particularly the option of establishing comprehensive price/time priority for all displayed trading interest. This option has been widely referred to in the press as a ''CLOB''—a central limit order book. The other five options were included in the Concept Release specifically to afford commenters an opportunity to submit their views on alternatives to a CLOB that would be more focused on specific practices or problems that may isolate investor orders, discourage quote competition, or impair public price discovery. The Commission hopes to receive the benefit of commenters' views on these other options as well.

Interested persons are invited to submit written data, views, and arguments concerning issues relating to market fragmentation discussed in the Concept Release. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NYSE–99–48. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*).

It is therefore ordered that the period for public comment on issues relating to market fragmentation is extended until May 12, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–10893 Filed 5–1–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (''Concept Release'').

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Assessment for the Proposed Actions Relating to the Change in Departure Procedure at Sarasota Manatee International Airport and Public Comment

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of availability and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the

availability of the Draft Environmental Assessment (DEA) for a proposed departure procedure at Sarasota Manatee International Airport and request for comments.

The DEA was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts and other applicable environmental laws and regulations. The DEA assesses the effects of proposed Federal actions under consideration by the FAA. The proposed actions are intended to achieve noise level reductions over the neighboring community in Manatee County north of the airport. The proposed actions include the following: (1) turning aircraft departing Runway 32 to the northwest over land-use areas that are more compatible with the noise emissions of aircraft and (2) reducing significant residential noise levels caused by aircraft executing the new turn.

DATES: The opportunity to provide written comments on the DEA will extend 45 days from the date of publication in the **Federal Register.** Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments on the Draft EA may be mailed, in triplicate, to: Federal Aviation Administration, Attention: Nancy Shelton, Air Traffic Airspace Branch, ASO–520, 1701 Columbia Ave., College Park, GA, 30337–2745.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Draft EA or the process being applied by the FAA should be directed to Nancy Shelton via telephone at (404) 305–5585, or in writing to the above address.

SUPPLEMENTARY INFORMATION:

The purpose of this Notice is to inform the public and local, State and Federal government agencies of the availability of the draft supplemental EA. It also provides interested parties with an opportunity to present to the FAA their opinions, comments, information or other relevant observations relating to the potential environmental impacts of these proposals.

The DEA is not being published in today's **Federal Register** due to its size and the detailed graphics on the charts contained in it. However, to maximize the opportunities for public participation in this environmental process, copies of the draft EA are available for review at the following libraries:

Longboat Key Library, 555 Bay Isles Rd., Longboat Key, FL.

Manatee County Public Library, 1301 Barcarrota Blvd. West, Bradenton, FL.

Selby Public Library, 1331 First Street, Sarasota, FL.

Issued in College Park, Georgia on April 26, 2000.

Dennis T. Koehler,

Manager, Air Traffic Division.

[FR Doc. 00–10917 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held May 10, 2000 at 11 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Regina Jones, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9822; fax (202) 267–5075; e-mail Regina.Jones@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on May 10, 2000, at the Federal Aviation Administration, 800 Independence Ave., SW., Room 1014, Washington, DC 20590. The agenda will include:

- Use of proxy votes
- ARAC Chair and Vice Chair
- New ARAC members

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by May 3, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on April 21, 2000.

Anthony F. Fazo,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–10852 Filed 4–27–00; 11:10 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burlington International Airport, South Burlington, Vermont

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Burlington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

DATES: Comments must be received on or before June 1, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John J. Hamilton, Airport Director for Burlington International Airport at the following address: Burlington International Airport, 1200 Airport Drive, #1, South Burlington, Vermont 05403.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Burlington under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Burlington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 14, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Burlington was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than August 1, 2000.

The following is a brief overview of the impose and use application.

PFC Project #: 00–03–C–00–BTV.

Level of the proposed PFC: $3.00.

Charge effective date: February 1, 2011.

Estimated charge expiration date: February 1, 2012.

Estimated total net PFC revenue impose authority: $1,788,581.

Estimated total net PFC revenue use authority: $3,002,002.

Brief description of use project: Air Carrier Apron Expansion—North End.

Brief description of impose and use projects:

PFC Application Costs.

North End Expansion (Baggage Claim Area).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burlington International Airport, 1200 Airport Drive, #1, South Burlington, Vermont 05403.

Issued in Burlington, Massachusetts on April 19, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–10849 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–00–7295]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 31, 2000 [FR 65 pages 4629 and 4630].

DATES: Comments must be submitted before June 1, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Barney, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination as it Applies to FTA Grant Programs (*OMB Number: 2132–0542*)

Abstract: All entities receiving federal financial assistance from FTA are prohibited from discriminating against any employee or applicant for employment because of race, color, creed, sex, national origin, age, or disability. To ensure that FTA's equal employment opportunity (EEO) procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, age, or disability.

Estimated Total Annual Burden: 4,500 hours.

Title: Title VI as it Applies to FTA Grant Programs (*OMB Number: 2132–0542*)

Abstract: Section 601 of Title VI of the Civil Rights Act of 1964 states: ''No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR Part 42, Subpart F (Section 42.406), and DOT Order 1000.12. FTA policies and requirements are designed to clarify and strengthen these regulations. This requirement is applicable to all applicants, recipients, and subrecipients receiving Federal financial assistance. Experience has demonstrated that a program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has

kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Estimated Total Annual Burden: 4,680 hours.

Title: Reporting of Technical Activities by FTA Grant Recipients (*OMB Number: 2132–0549*)

Abstract: 49 U.S.C. Sections 5303 and 5313(a) and (b) authorize the use of Federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas and nonurbanized areas throughout the nation. As part of this effort, MPOs are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as planning certification reviews and other related activities.

The information collected by these forms is used to report annually to Congress, the Secretary, and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Estimated Total Annual Burden: 150 hours.

Title: Bus Testing Program (*OMB Number: 2132–0550*)

Abstract: 49 U.S.C. Section 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. Section 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), has entered into a cooperative agreement with FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Estimated Total Annual Burden: 60 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: April 26, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–10918 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–00–7296]

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Prevention of Prohibited Drug Use in Transit Operations.

DATES: Comments must be submitted before July 3, 2000.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: *Prevention of Prohibited Drug Use in Transit Operations*—Mr. Mark Snider, Office of Program Management, (202) 366–1080.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Prevention of Prohibited Drug Use in Transit Operations (*OMB Number: 2132–0556*)

Background: The Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, October 28, 1991, now codified in relevant part at 49 U.S.C. Section 5331) requires any recipient of federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e)(4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR Part 653, ''Prevention of Prohibited Drug Use in Transit Operations,'' effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' drug testing program, such as the number and type of tests given, number of positive test results, and the kinds of safety-sensitive functions the employees perform. FTA uses these data to ensure compliance with the rule, to assess the misuse of drugs in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of drugs among safety-sensitive transit employees and making transit safer for the public.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 14.6 hours for each of the 2,317 respondents.

Estimated Total Annual Burden: 33,883 hours.

Frequency: Annual.

Issued: April 26, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–10919 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of April 18–19, 2000, Meeting with VISA Participants.

On April 18–19, 2000, the Maritime Administration (MARAD) and the United States Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at USTRANSCOM, Scott Air Force Base, Illinois.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 48 U.S.-flag carrier corporate participants currently enrolled in VISA, 16 cleared VISA carrier representative companies participated in the JPAG. Representatives from the trucking and railroad industries were also present to explore their role in the movement of Department of Defense (DOD) cargoes. In addition, JPAG attendance included representatives from the DOD, the Military Traffic Management Command, Military Sealift Command, USTRANSCOM and MARAD.

Following opening remarks by Mr. Daniel F. McMillin, Deputy Director, Plans and Policy Directorate (TCJ5) USTRANSCOM, Government representatives provided participants with an overview of expected outcomes. The JPAG objectives included an exploration of the intermodal capability of VISA carriers to handle the loading of unit equipment and development of Concept of Operations (CONOPS) for moving ammunition from origin to port of debarkation. The VISA participants convened in separate work groups with Government analysts to discuss the above issues. Afterwards, the groups met together to discuss the results of their analyses. At the conclusion of the JPAG, VISA participants were briefed on the results of Exercise Turbo Challenge 2000.

The full text of the VISA program is published in 64 FR 8214–8222, dated February 18, 1999. One of the program requirements is that MARAD periodically publish a list of VISA participants in the **Federal Register**. As of April 19, 1999, the following commercial U.S.-flag vessel operators were enrolled in VISA with MARAD: Alaska Cargo Transport Inc., American Automar, Inc., American President Lines, Ltd., American Roll-On Roll-Off Carrier, LLC, American Ship Management, L.L.C., Automar International Car Carrier, Inc., Beyel Brothers Inc., Central Gulf Lines, Inc., Cook Inlet Marine, Crowley American Transport, Inc., Crowley Marine Services, Inc., CSX Lines, LLC, Dixie Fuels II, Limited, Double Eagle Marine, Inc./Caribe USA, Inc., Farrell Lines Incorporated, First American Bulk Carrier Corp., First Ocean Bulk Carrier-I, LLC, First Ocean Bulk Carrier-II, LLC, First Ocean Bulk Carrier-III, LLC, Foss Maritime Company, Gimrock Maritime, Inc., Liberty Shipping Group Limited Partnership, Lykes Lines Limited, LLC., Lynden Incorporated, Maersk Line, Limited, Matson Navigation Company, Inc., Maybank Navigation Company, LLC, McAllister Towing & Transportation Company, Inc., Moby Marine Corporation, NPR, Inc., OSG Car Carriers, Inc., Osprey Shipholding Corporation, L.L.C., Resolve Towing & Salvage, Inc., Samson Tug & Barge Company, Inc., Seacor Marine International Inc., Sealift Inc., Smith Maritime, Stevens Towing Co., Inc., Superior Marine Services, Inc., Totem Ocean Trailer Express, Inc., Trailer Bridge, Inc., TransAtlantic Lines LLC, Trico Marine Operators, Inc., Troika International, Ltd., U.S. Ship Management, Inc., Van Ommeren Shipping (USA) LLC, Waterman Steamship Corporation, and Weeks Marine, Inc.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Raymond R. Barberesi, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: April 26, 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00–10866 Filed 5–1–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Report of New Systems of Records—Disaster Emergency Medical Personnel System—VA (98VA104).

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that VA proposes to establish a new system of records. The proposed system is entitled ''Disaster Emergency Medical Personnel System (DEMPS)–VA'' (98VA104).

DATES: Comments on the establishment of this new system of records must be received no later than June 1, 2000. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the system will become effective June 1, 2000.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Holidays).

FOR FURTHER INFORMATION CONTACT: Stephania Putt, Veterans Health Administration Privacy Act Officer, at (727) 320–1839.

SUPPLEMENTARY INFORMATION: DEMPS is to be used by the Emergency Management Strategic Healthcare Group (EMSHG) primarily in times of national emergencies caused by catastrophic events. This system may be used to respond to internal emergencies occurring within the Veterans integrated Service Networks (VISNs).

It is the Veterans Health Administration's (VHA) policy to use DEMPS to respond to internal emergencies occurring within the VISNs. In order to provide sufficient health care medical personnel to respond to disasters, it is necessary to develop a nationwide VHA system of special-skilled personnel. These persons would be available to serve for limited periods of time in response to Presidentially-declared and internal VA

national emergencies. VHA maintains a nationwide register of clinical personnel who volunteer their special medical skills in response to emergencies.

Information in DEMPS comes from VHA full-time employees who provide the information voluntarily. Information collected and maintained in DEMPS includes personal and demographic information initiated, provided, and authenticated by the employee and contains the necessary approvals and signatures of supervisory officials. Information includes the employee's full name, social security number, station and VISN assignment, station address and phone number, home address and phone number, emergency contact and phone number, professional/job series, grade, speciality, current job assignment, description of advanced degree/certification (if any); physical limitations (if any); prior experience in disaster response (if any); specialized training; related military medical training, other relevant training and dates thereof. DEMPS constitutes a system of records under the Privacy Act of 1974 (5 U.S.C. 552a) and data contained therein are considered private information.

A notice of intent and an advance copy of the new system notice have been sent to the appropriate Congressional committees and the Director, Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: April 18, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

98VA104

SYSTEM NAME:

Disaster Emergency Medical Personnel System—VA

SYSTEM LOCATION:

Records are maintained at each of the Department of Veterans Affairs (VA) health care facilities. The address locations for VA facilities were listed in VA Appendix I of the biennial publication of the VA systems of record. Information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; Network Directors' Offices; Emergency Management Strategic Healthcare Group Headquarters, VA Medical Center, Martinsburg, WV 25401; or with the Area Emergency Managers located at VA facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

VA employees who make application to VA and are considered for deployment as health care providers primarily in times of national emergencies in response to domestic disasters resulting from natural and technological hazards, terrorist attacks, and the employment of nuclear, biological, and/or chemical weapons of mass destruction. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, speech pathologists, contracting specialists, building maintenance, engineering, housekeeping, and other personnel associated with emergency management.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on VA employees who make application to be deployed as health care providers primarily in times of national emergencies. This source document provides personal and demographic information initiated, provided and authenticated by the employee and contains the necessary approvals and signatures of officials in the supervisory chain for the employee's inclusion in the data base. Information is provided on a voluntary basis. Information related to identifying and selecting individuals by the Emergency Management Strategic Healthcare Group, networks and medical centers eligible to support specific job tasking and assignments during either disasters internal to the Veterans Health Administration health care system, or external to VHA for which the VA is tasked to provide support, under applicable authorities. Requests for issuance of travel orders and necessary reimbursement to VA for subsequent allocation of funds to home stations of deployed personnel are required to cover costs of travel, overtime and other expenses associated with individual deployments. This information is necessary to account for personnel deployed to support disasters, to identify personnel with specific job skills and experience that may be required to support contingency missions tasked to VA under the VA/Department of Defense (DoD) Contingency Plan, and for the development of plans at the corporate, network and medical center level for utilization of VHA personnel in support of VA internal and external disasters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system of records is Executive Order 12656 dated November 18, 1988.

PURPOSE(S):

The records may be used for such purpose as to provide information on sufficient health care medical personnel to respond to disasters, to provide information to the Emergency Management Strategic Healthcare Group primarily in times of national emergencies caused by catastrophic events, and to respond to internal emergencies occurring within the Veterans Integrated Service Networks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below:

1. Selected information (such as name, social security number, home station and telephone numbers) may be disclosed to other Federal departments and agencies that have an interest in or obligation to track or otherwise audit transfer of funds to VA for reimbursement of tasks.

2. Statistical information and other data may be disclosed to Federal, State and local government agencies to assist in disaster planning and after-action reports.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

4. Disclosure may be made to any source, such as a police department or the Federal Bureau of Investigation, from which additional information is requested to the extent necessary to identify the individual, inform the source of the purpose(s) of the request,

and to identify the type of information requested such as DEMPS personnel present at a crime scene caused by terrorists.

5. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, for information in connection with the selection of an employee for the deployment and future training of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's deployment/Federal Response Plan needs.

6. Disclosure may be made to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

8. Disclosure may be made to a Federal agency or to a State or local government licensing board, and/or to the Federation of State Medical Boards, or a similar non-government entity, provided the entity maintains records concerning individuals' employment histories, is engaged in the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty. The disclosure is for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee, or to inform a Federal agency, licensing boards or to the appropriate non-government entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

9. Information may be disclosed to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission on Accreditation of Healthcare Organizations) when the disclosure is in the best interest of the government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in VA's or the Federal government's role in the community, then the government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

10. Information may be disclosed to a State or local government entity or national certifying body that has the authority to make decisions concerning the issuance, retention or revocation of licenses.

11. Information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

12. Information on deployment to Federal/VHA emergencies, performance, or other personnel-related material may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

13. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA/emergency disaster-served client patient, or the representative or guardian of a patient who, due to physical or mental incapacity, lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

14. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

15. Information may be disclosed to the VA-appointed representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

16. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

17. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

18. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, and in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised.

19. Disclosure may be made to agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirement of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Reports of all transactions dealing with data will be used within VA and will not be provided to any consumer-reporting agency.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:

STORAGE:

Automated records are maintained at all levels of management outlined in system location. Automated information may be stored on microfilm, magnetic tape, disk, or call down data bases.

RETRIEVABILITY:

Records are retrieved from the system by the name, professional title, social security number, VISN, home station, professional specialty, job position title, etc., of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a need-to-know basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to the Veterans Health Information Systems Technology Architecture (VISTA) computer room within the health care facilities is generally limited by appropriate security devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Authorized VA employees may access information in the VISTA system. Access to file information is controlled at two levels: The system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

RETENTION AND DISPOSAL:

An automated database of DEMPS personnel will be maintained at the employing VA facility. If the individual transfers to another VA facility location, the name will be added to the database at the new location. Information stored on electronic storage media is maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEMS MANAGER(S) AND ADDRESS:

Official responsible for maintaining the system: Director, Emergency Management Strategic Healthcare Group (EMSHG) (104), VA Medical Center, Martinsburg, West Virginia, 25401.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application as a deployment volunteer, or are or were employed. Inquiries should include the employee's full name, social security number, date of application for employment or dates of employment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment or are or were employed.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The information will be provided by the individual VA employee and the VA medical facility (home station) or other VA location at which the employee was employed. EMSHG Headquarters will also provide information for updates of deployment status and availability.

[FR Doc. 00–10910 Filed 5–1–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; New System of Records—Automated Electronic Document Management System (EDMS)—VA (92VA045)

AGENCY: Department of Veterans Affairs.

ACTION: Notice, New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled ''Electronic Document Management System (EDMS)—VA (92VA045).''

EDMS is used to process replies to correspondence and other inquiries (received via hard copy, e-mail, fax, Internet, telephone, or in person) that originate from Members of Congress; other Federal agencies; state, local and tribal governments; Foreign governments; veterans service organizations; representatives of private or commercial entities; veterans and their beneficiaries; other private citizens; and VA employees. EDMS is also used for some categories of correspondence and records internal to VA. EDMS does not duplicate any other system of records within the Government.

Records maintained in this system of records in electronic and paper form vary, depending on the nature of the materials received, background information compiled, and/or response sent. Each may include the names, social security numbers, mailing addresses, telephone numbers and other personal identifiers routinely required to identify a correspondent or subject. Other record items maintained may include personal facts about medical, financial, or memorial benefits related to the correspondent, veteran or beneficiary. Internal VA records may include (but are not limited to) VA administrative, financial and personnel information.

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974, for investigatory, judicial and administrative uses. This includes disclosure to third parties acting on a claimant's behalf; to law enforcement agencies when records in the system pertain to a violation or possible violation of law; to answer congressional inquiries initiated by individuals; to the National Archives and Records Administration during records management inspections; to requests for statistical data to be disclosed to other VA facilities; Members of Congress; other Federal agencies; state, local and tribal governments for statistical analyses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions and or objections regarding the proposed system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. All relevant material received before June 1, 2000

will be considered. All written comments received will be available for pubic inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m. only, Monday through Friday (except Federal holidays).

If no public comment is received in the 30-day review period allowed, or unless otherwise published in the **Federal Register** by VA, routine use statements and all other provisions included herein are effective June 1, 2000.

SUPPLEMENTARY INFORMATION: A ''Report of Intention to Publish a **Federal Register** Notice of a New System of Records'' and an advance copy of the new system notice have been provided to the chairman of the House Committee on Government Reform and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a, as amended (Privacy Act), and guidance issued by OMB (50 FR 52730), December 24, 1985, and revisions thereto, published on (58 FR 36068), July 2, 1993; (59 FR 37906), July 25, 1994; and (61 FR 6428), February 20, 1996.

For further information, contact the Associate Deputy Assistant Secretary for Policy and Program Assistance (045A), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420—(202) 273–8127.

Approved: April 24, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

92VA045

SYSTEM NAME:

Electronic Document Management System (EDMS)—VA.

SYSTEM LOCATION:

Automated records are maintained within the Electronic Document Management System (EDMS) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. Paper correspondence records are maintained in file cabinets under the control of the office responsible for processing the correspondence item.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and their staff, officials and representatives of other Federal agencies, state, local and tribal governments, Foreign governments, and veterans service organizations; representatives of private or commercial entities; veterans and their beneficiaries; other private citizens; and VA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in electronic and paper form depending on the nature of the materials received, background information compiled, and/or response sent. Each may include the names, social security numbers, mailing addresses, telephone numbers, and other personal identifiers routinely required to identify a correspondent or subject. Other record items maintained may include personal facts about medical, financial, or memorial benefits related to the correspondent, veteran or beneficiary. Internal VA records may include (but are not limited to) VA administrative, financial and personnel information. Records may include scanned document, letter, e-mail, fax, Internet document, tracking sheet, note, documentation of a telephone call and/or of a meeting with an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 501(c).

PURPOSES:

EDMS is used to process replies to correspondence and other inquiries that originate from members of Congress; other Federal agencies; state, local, and tribal governments; Foreign governments; veterans service organizations; representatives of private or commercial entities; veterans and their beneficiaries; private citizens; and VA employees. EDMS is also used for some categories of correspondence and records internal to VA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF USE:

1. VA may disclose the records in this system, except for the name and address of a veteran, that it determines are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation or order issued pursuant thereto.

2. VA may disclose the name and address of a veteran that it determines are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation or order issued pursuant thereto.

3. VA may disclose the records in proceedings before a court or adjudicative body before which VA is authorized to appear when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4. Information may be provided to Members of Congress or staff persons in response to an inquiry from an individual to Members of Congress, made at the request of the individual and concerning that individual's VA records. Such information will be provided as authorized by law.

5. Information may be provided to a third party acting on an individual's behalf, such as agencies of Federal, state, local and tribal governments, Foreign governments; veterans service organizations; representatives of private or commercial entities in response to a request made by the individual to the third party and concerning that individual's VA records. Such information will be provided as authorized by law.

6. VA may compile statistical information using records contained in EDMS, except for identification information of a veteran such as name, address or social security number. This information may be disclosed to other VA facilities, Members of Congress; other Federal agencies; state, local and tribal governments. VA will determine that the use of such statistical information is relevant and necessary, that disclosure of the information contained in the records is compatible with the purpose for which the records were collected.

7. Disclosure may be made during reviews by the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

8. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THIS SYSTEM:

STORAGE:

EDMS employs rotational magnetic disk and Write Once-Read Many (WORM) optical disk media for storage of electronic records. Electronic records are regularly copied and moved to a separate physical location to assure a fail-safe records recovery capability. Paper records are maintained in file cabinets under the control of the office responsible for processing the record.

RETRIEVABILITY:

Key identification information is established for each record in EDMS. This information is in relation to the nature of materials received, background information compiled and/or response sent. Retrieval is by searching for specific key information (e.g., record identification number, author, correspondent name, subject matter, initial date record established, etc.).

SAFEGUARDS:

Access to EDMS is via personal computer terminal. Necessary and sufficient application security functionality (i.e., unique customer user identification code/password and user-specific administrative control levels) are used to limit access to authorized VA staff, and to limit operations they may perform. To obtain access to EDMS' electronic records, VA staff must comply with the following procedures:

1. VA staff may not self-register in the system for access. A request for a user identification code and password is reviewed and approved by the designated EDMS Office Coordinator, and entered into the system by the system administrator. Approved staff are issued a user identification code and a temporary password, which they are required to change when they first sign onto the system.

2. Electronic records are protected by classifications, specified when the records are created. The owner of the record or authorized security personnel are the only ones who can modify the classification. A user's rights to inspect or modify records will depend on the user's assigned administrative control level as compared to the record's classification. The EDMS System Administrator manages the records classifications and user administration control levels.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration. Paper records will be destroyed by shredding or other appropriate means for destroying sensitive information. Automated storage records are retained and destroyed in accordance with disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Assistant Secretary for Policy and Program Assistance (045A), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. The phone number is (202) 273–8127.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or who wants to determine the contents of such records should submit a written request to the System Manager at the address above.

RECORD ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the System Manager.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Records in this system are derived from processing replies to correspondence, and other inquiries that originate from Members of Congress; other Federal agencies; state, local and tribal governments; Foreign governments, veterans service organizations; representatives of private or commercial entities; veterans and their beneficiaries; other private citizens; and VA employees. Records maintained include material received, background information compiled and/or response sent. EDMS is also used for some categories of correspondence and records internal to VA. Internal VA records may include (but are not limited to) VA administrative, financial and personnel information.

[FR Doc. 00–10911 Filed 5–1–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 85

Tuesday, May 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

Correction

In notice document 00–10211 beginning on page 24188 in the issue of Tuesday, April 25, 2000, make the following correction:

On page 24188, in the third column, in the fourth line of the paragraph beginning with *Comments:*, the date ''June 26, 2000'' should read ''May 25, 2000''.

[FR Doc. C0–10211 Filed 5–1–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 2, 2000

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, et al.

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395, and 398

[Docket No. FMCSA–97–2350; formerly FHWA–97–2350 and MC–96–28]

RIN 2126–AA23

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA is proposing to revise its hours-of-service (HOS) regulations to require motor carriers to provide drivers with better opportunities to obtain sleep, and thereby reduce the risk of drivers operating commercial motor vehicles (CMVs) while drowsy, tired, or fatigued to reduce crashes involving these drivers. This action is necessary because the FMCSA estimates that 755 fatalities and 19,705 injuries occur each year on the Nation's roads because of drowsy, tired, or fatigued CMV drivers. The regulations proposed in this document would:

First, revert to a 24-hour daily cycle, and a 7-day weekly cycle.

Second, adjust the work-rest requirements for various types of operations.

Third, emphasize rest. Require for long-haul and regional drivers a period of 10 consecutive hours off duty within each 24-hour cycle, and two hours of additional time off in each 14-hour work period within each 24-hour cycle.

Fourth, require weekends, or their functional equivalent, to include at a minimum a rest period that includes two consecutive periods from 11:00 p.m. to 7:00 a.m.

Fifth, require the use of electronic on-board recorders (EOBRs) in CMVs used by drivers in long-haul and regional operations.

DATES: You must submit your comments to this NPRM no later than July 31, 2000; however, late comments will be considered to the extent practicable.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments and data may also be submitted electronically by using the submission form at *http://dmses.dot.gov/submit/BlankDSS.asp.* All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: *For information on the proposed rule:* Mr. David Miller or Ms. Deborah Freund, Federal Motor Carrier Safety Administration, (202) 366–1790, and Mr. Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, (202) 366–1354. *For information on the public hearings:* Mr. Stan Hamilton, Federal Motor Carrier Safety Administration, (202) 366–0665. *For information about submitting comments and data electronically:* DMS Web staff at Mail.Dockets@tasc.dot.gov, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

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I. Electronic Availability of This NPRM

Internet users may access this NPRM and all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Internet users may also find this NPRM at the FMCSA's Motor Carrier Regulatory Information Service (MCREGIS) website for proposed rules at: *http://mchs.fhwa.dot.gov/rulesregs/fmcsr/rulemakings.htm#proposedrule.*

II. Introduction

There is general consensus that modifications to current HOS regulations would substantially improve CMV safety by reducing the fatigue factor in CMV-involved crashes. There is evidence that many crashes occur as a result of CMV driver error, that driver error is often the result of inattention,

that inattention can often be the result of fatigue, that the fatigue which causes inattention is often related to sleep deprivation, and that sleep deprivation is often related to working conditions of drivers. This proposal would make the HOS regulations more effective by requiring motor carriers and drivers to adhere to the following six standards and enforcing them:

1. Promote scheduling, dispatching, and operating practices minimizing the use of tired, inattentive drivers.
2. Make available for each driver a consecutive minimum off-duty period of time each workday and workweek for the purpose of obtaining restorative sleep.
3. Make available for each driver an additional minimum off-duty period of time each workday, during the workday or afterwards, to allow a driver to tend to personal necessities and rest at the driver's discretion.
4. Empower the driver to accept or refuse dispatch or continuation of a trip based upon the driver's assessment of his/her alertness level.
5. Enhance motor carriers' and CMV drivers' knowledge and use of safety techniques, devices, and practices that avoid driver impairment due to lack of sleep.
6. Require the use of automated time EOBR technology to monitor the work-rest cycles of long-haul and regional drivers and compliance with the rules, as well as encourage the use of technology for other drivers.

The basic HOS rules have been in effect in their current form since 1962, and controversial for even longer than that. The rules allow CMV drivers in interstate commerce to drive up to 10 hours after 8 consecutive hours off duty. After being on duty for 15 hours, a driver may not drive without taking another 8 consecutive hours off duty. Weekly limits provide that if a motor carrier does not operate CMVs every day of the week, its drivers may not drive after being on duty 60 hours in 7 consecutive days; if the carrier operates CMVs every day, its drivers may not drive after being on duty 70 hours in 8 consecutive days (49 CFR 395.3). Although the charge is sometimes made that the FMCSA is pursuing an ill-conceived ''one size fits all'' policy toward the highly diversified motor carrier industry, the HOS rules in fact include a number of exceptions for specific situations or operations (see § 395.1).

It has become increasingly clear, however, that a complete reevaluation of the HOS rules is needed. America's transportation system has changed significantly since 1962, and even more fundamentally since the late 1930's, when the Interstate Commerce Commission (ICC) adopted the first HOS rules. Long-haul truckers in the 1930's could average only 25 miles per hour (mph)—the top speed was 40 mph—and the best daily run was about 250 miles (11 M.C.C. 203). The construction of the Interstate Highway System has contributed to significantly higher traffic speeds and volumes. Trucking, once a relatively minor adjunct to the railroads, has become the dominant form of transportation for most commodities. Much of the nation's truck traffic moves on the Interstates and other high-speed roads, sometimes for very long distances. Increased exposure to the risk of accidents follows automatically from annual increases in the number of trucks and other vehicles on the road and in total vehicle miles of travel (VMT). The high volume and speed of traffic on the Interstates and many other roads require a high level of driver alertness, for the sheer mass of a truck can make it deadly when accidents occur. Of course, trucks also operate in local or regional environments, often in heavy traffic, and drivers are required to perform an ever-wider range of duties. The results of scientific research into fatigue causation, sleep, circadian rhythms, night work, and other matters were unavailable decades ago when the HOS rules were formulated.

Many people have indicated their concern over driver fatigue, and their concomitant belief that the present HOS regulations do not adequately ensure that drivers are rested. Driver fatigue was voted the number one safety concern of the Federal Highway Administration's (FHWA) 1995 Truck and Bus Safety Summit, a meeting of over 200 drivers, motor carrier representatives, government officials, and safety advocates. The National Transportation Safety Board (NTSB) has also asked the FMCSA to investigate driver fatigue.

On June 1, 1999, the NTSB, recognizing that fatigue is an issue which affects all transportation modes, issued the following recommendation to the Department of Transportation:

> Require the modal administrations to modify the appropriate Codes of Federal Regulations to establish scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements. Seek Congressional authority, if necessary, for the modal administrations to establish these regulations.

The FMCSA had already devoted several years' of work toward the development of this NPRM at the time the NTSB issued its recommendation. The FMCSA believes that the revised HOS rules proposed today will reduce the acute and cumulative fatigue which appears to beset many drivers and thus prevent a significant number of crashes and fatalities, while limiting major compliance costs on those segments of the motor carrier industry that have the lowest fatigue-related CMV crashes and focusing the major compliance costs on those segments with the highest fatigue-related CMV crashes.

The FMCSA's jurisdiction over the HOS regulations for motor carriers and drivers is specified in Table 1. Motor carriers and drivers are subject to applicable State motor vehicle and highway safety laws and regulations, regardless of whether the motor carriers or drivers are subject to any or all of the FMCSRs.

In October, 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (*see,* 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration (FMCSA) as a new operating administration within the Department of Transportation, effective January 1, 2000 (Public Law 106—159, 113 Stat. 1748, December 9, 1999). The Secretary therefore rescinded the motor carrier authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Center's and Division (i.e., State) Offices have been transferred without change to the FMCSA Resource Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FHWA and continued under the OMCS will be completed by the FMCSA. The recent redelegations do not affect the validity of the November 5, 1996, Advance Notice of Proposed

Rulemaking (ANPRM) in this proceeding (61 FR 57252). All comments to that docket have been transferred to the new FMCSA docket and have been considered in preparing this document. The NPRM has been under development since the June 30, 1997, ANPRM docket closing date. Although the FMCSA has attempted to remove all non-relevant present-tense references to the FHWA and the OMCS, any that remain should be considered references to the FMCSA.

TABLE 1.—APPLICABILITY OF FMCSA HOURS OF SERVICE OF DRIVERS RULEMAKING

If you operate a:	In interstate commerce	In intrastate commerce
CMV—A motor vehicle(s) that has any of the following four characteristics: 1. A GVW, GVWR or GCWR [1] of at least 4,537 kilograms (10,001 pounds); or 2. Is designed or used to transport more than 8 passengers, including the driver, for compensation; or 3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or 4. Is used to transport hazardous materials in quantities requiring the vehicle to be marked or placarded under the Hazardous Materials Regulations (49 CFR part 172, subparts D & F).	You must comply with all FMCSA HOS [2] requirements and are subject to proposals made in this NPRM.	You are not subject to the FMCSA HOS. You may be subject to proposals made in this NPRM, if your State or local government adopts final rules based on these proposals in order to participate in the Motor Carrier Safety Assistance Program, 49 CFR part 350.

[1] GVW, GVWR, and GCWR are acronyms for Gross Vehicle Weight, Gross Vehicle Weight Rating, and Gross Combination Weight Rating, respectively. See 49 CFR 390.5.

[2] As noted in § 390.3(f) and specifically provided elsewhere in the FMCSRs, the following six categories of CMVs and drivers operating these CMVs are exempt from the FMCSRs, in whole or in part:

(1) The occasional transportation of personal goods by individuals not for compensation (such as moving your own household) are exempt from all the FMCSRs.

(2) The transportation of children and/or school personnel from home to school and from school to home are only subject to the driver CDL and alcohol and controlled substance requirements of 49 CFR Parts 382 and 383.

(3) Transportation performed by the Federal government, a State, any political subdivision of a State, or an agency established under an agreement between States that has been approved by the U.S. Congress are only subject to the driver CDL and alcohol and controlled substance requirements of 49 CFR Parts 382 and 383.

(4) CMVs used wholly on private property not open to public travel (such as yard hostlers and yard tractors in a motor carrier's terminal) are exempt from all the FMCSRs.

(5) Fire trucks, ambulances, and rescue vehicles involved in emergency related operations, unless a State exempts driver of such vehicles (See 49 CFR 382.103(d) and 383.3(d)), are only subject to the driver CDL and alcohol and controlled substance requirements of 49 CFR Parts 382 and 383.

(6) Transportation of human corpses and sick and injured persons.

(7) The operation of CMVs designed to transport less than 16 passengers, including the driver, until March 6, 2000.

BILLING CODE 4910–22–P

Chart 1

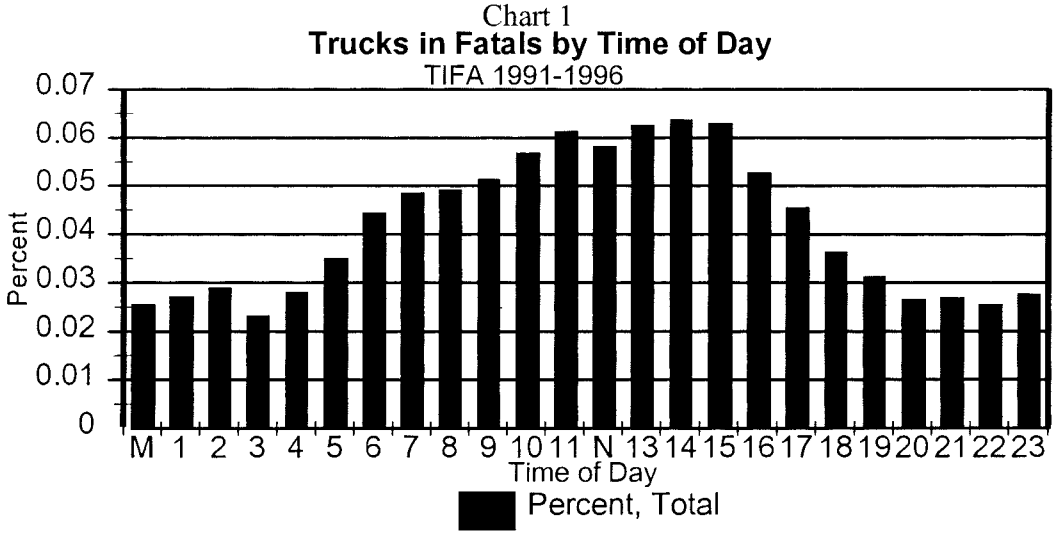
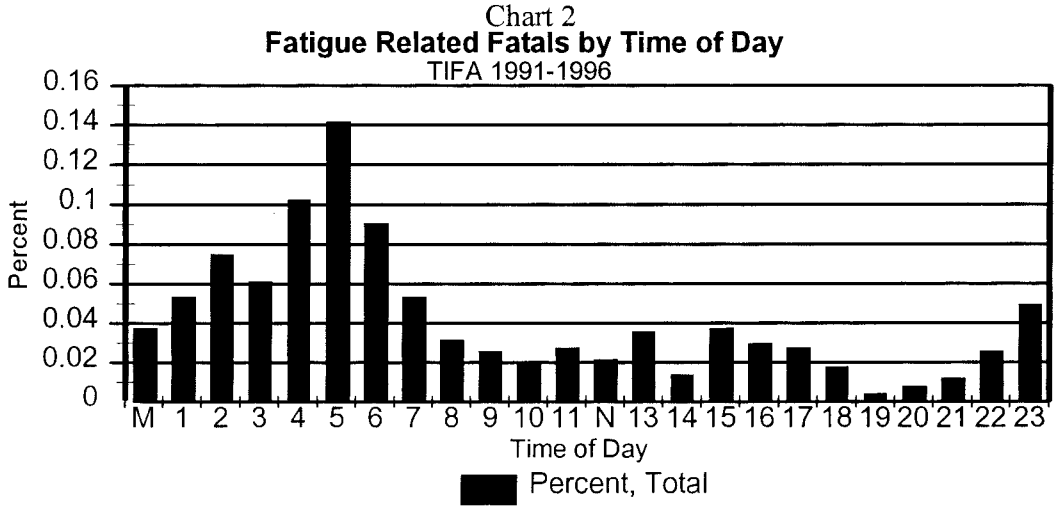


Chart 2



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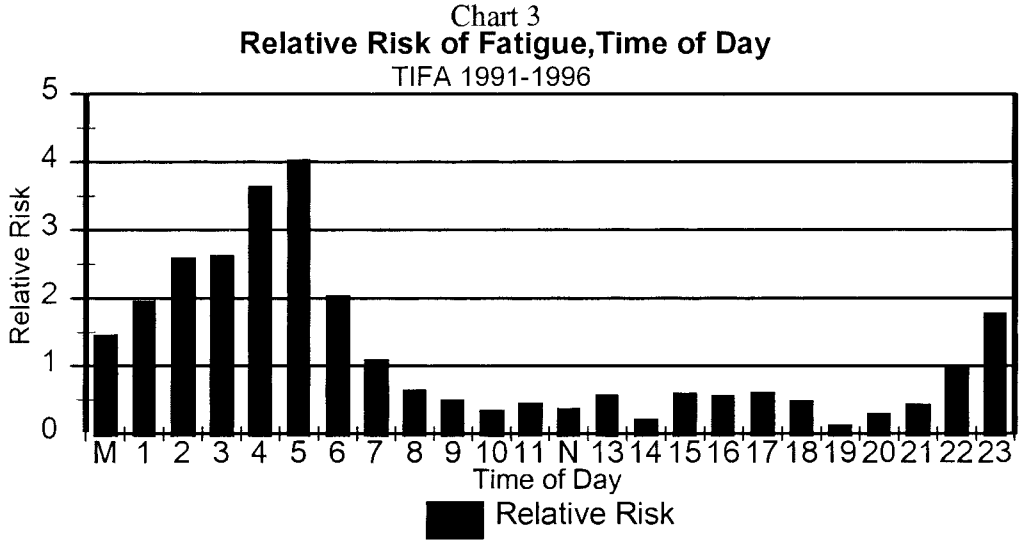
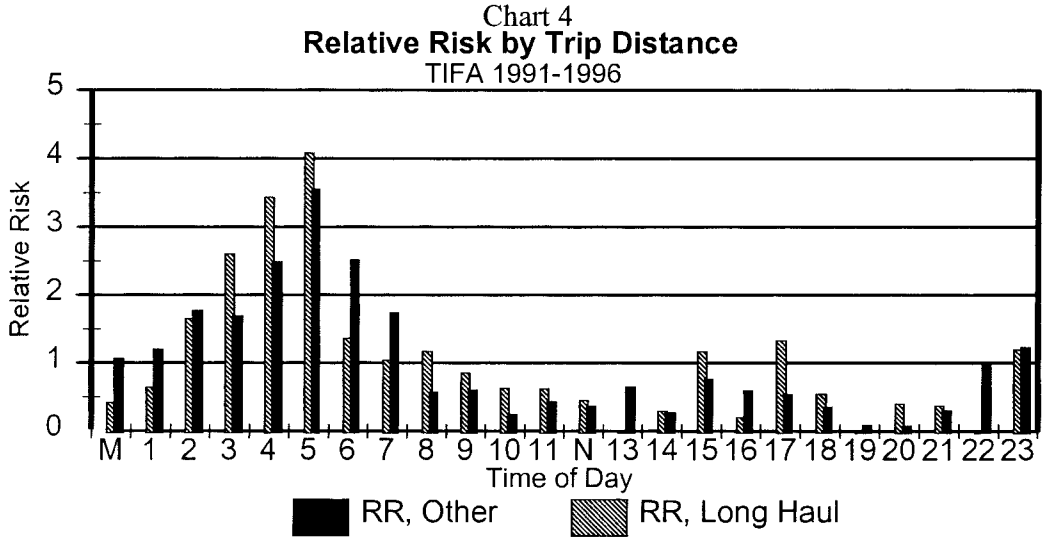


Chart 4



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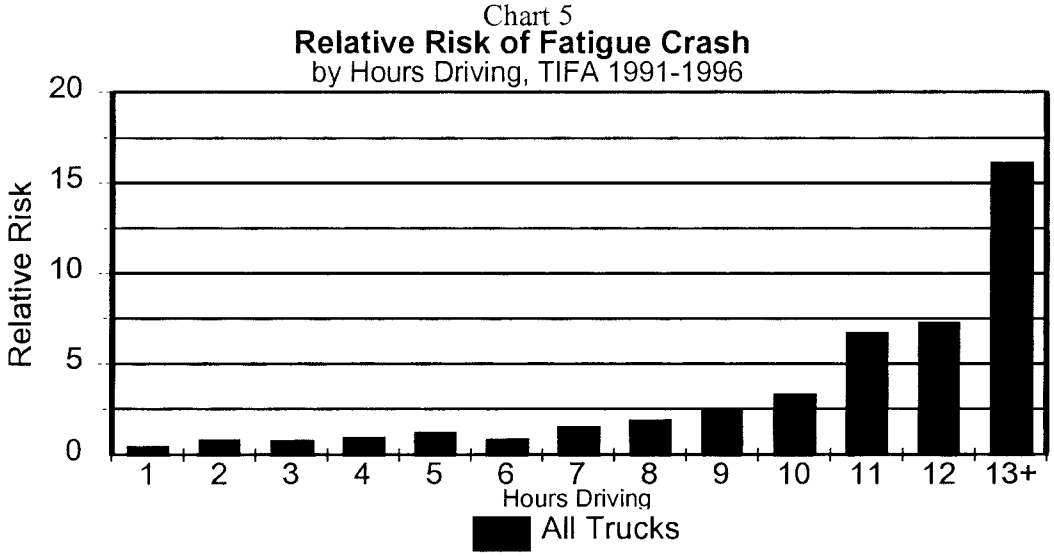
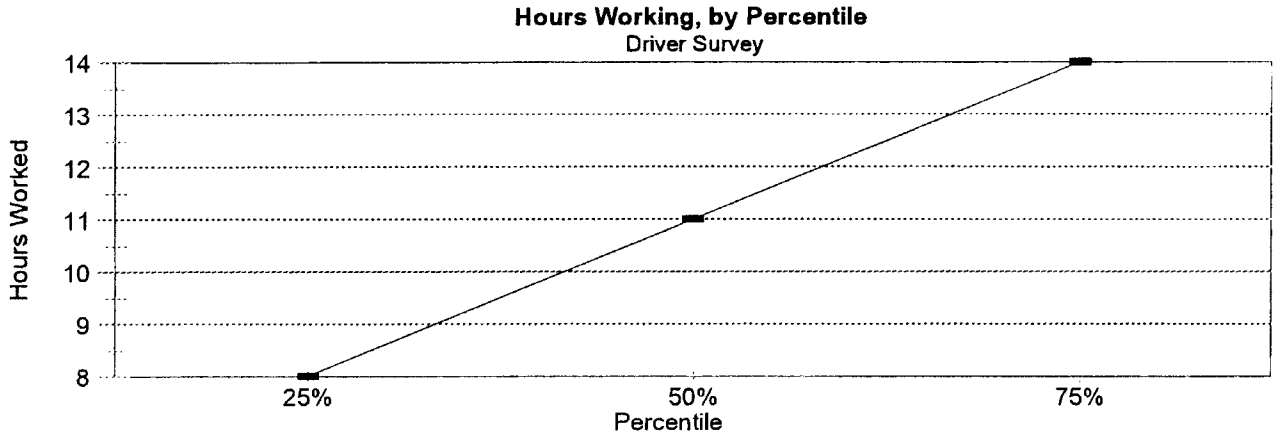


Chart 6



BILLING CODE 4910–22–C

III. The Safety Problem

While nearly everyone who has studied the current HOS rules agrees that they could and should be improved, it is difficult to reach consensus on alternatives because the extent and nature of the problem are unclear. This was acknowledged in a June 1, 1999, letter from Jim Hall, Chairman of the NTSB, to DOT Secretary Rodney E. Slater. Chairman Hall said, among other things:

> Fatigue has remained a significant factor in transportation accidents since the Safety Board's 1989 recommendations were issued. Although generally accepted as a factor in transportation accidents, the exact number of accidents due to fatigue is difficult to determine and likely to be underestimated. The difficulty in determining the incidence of fatigue-related accidents is due, at least in part, to the difficulty in identifying fatigue as a causal or contributing factor in accidents. There is no comparable chemical test for identifying the presence of fatigue as there is for identifying the presence of drugs or alcohol; hence, it is often difficult to conclude unequivocally that fatigue was a causal or contributing factor in an accident. In most instances, one or more indirect or circumstantial pieces of evidence are used to make the case that fatigue was a factor in the accidents. This evidence includes witness statements, hours worked and slept in the previous few days, the time at which the accident occurred, the regularity or irregularity of the operator's schedule, or the operator's admission that he fell asleep or was impaired by fatigue. Despite the difficulty in identifying fatigue as a causal factor, estimates of the number of accidents involving fatigue have been made for the different modes of transportation; the estimates vary from very little involvement to as high as about one-third of all accidents.
>
> Although the data are not available to statistically determine the incidence of fatigue, the transportation industry has recognized that fatigue is a major factor in accidents. Further, the Safety Board's in-depth investigations have clearly demonstrated that fatigue is a major factor in transportation accidents.

The objective of this proposal is to reduce the number of fatigue-related truck and motorcoach crashes. The overall benefit therefore will depend on the effect this proposal will have on reducing the current number of these crashes.

For purposes of this proposal, the FMCSA has assumed that bus drivers operate in ways similar to truck drivers. The FMCSA requests comments about the accuracy of this assumption. Although there are research studies in the docket concerning the performance of bus drivers suffering from fatigue, the FMCSA could find no research studies on which to distribute bus drivers subject to FMCSA jurisdiction among different operations for the safety and benefit-cost analyses in the docket.

There are significant differences in published estimates of the number and proportion of fatigue-related CMV crashes. Much of this results from the differing analytical approaches used, particularly differences in the set of crashes analyzed. Generally speaking, these studies can be divided into two classes: those relying on large-scale accident data files, and those based on more intensive analysis of a smaller number of crashes.

The FMCSA and the National Highway Traffic Safety Administration (NHTSA) have conducted several fatigue-related CMV crash studies using large-scale data bases, primarily the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES). These databases, which are managed by NHTSA, are based largely (but not exclusively) on police accident reports (PARs). Most police accident forms contain a field for driver contributing factor, and generally among the choices are driver fatigue, drowsiness, or asleep at the wheel. In most analyses, crashes in which one of these fields is checked are classified as fatigue-related.

Crash analysts frequently criticize use of PARs for fatigue analysis, as they believe that PARs understate the true extent of fatigue. Police face a number of difficulties in determining whether fatigue contributed to a crash. First, the responding officer's primary concern is assisting crash victims and restoring the flow of traffic. Investigating the causes of the crash is often a second (or lower) level concern. Second, few police officers are trained in crash reconstruction and, consequently, they are unable to conduct a detailed investigation of the physical and mechanical evidence.

Also, it is unclear what should be counted as a fatigue-related crash. Clearly all crashes where fatigue is cited should be included, but there are other crashes where fatigue may play a less direct role. Crashes involving inattention, distraction, or other driver failures may be related to fatigue, as fatigued drivers are more prone to various types of mental error. These errors are major causal factors in crashes.

The ''Tri-Level Study of the Causes of Traffic Accidents,'' Treat *et al.* (1979), is perhaps the most in-depth study ever performed in the United States on crash causation. This was principally a study of automobile drivers and their crashes. It found that ''recognition failure'' was involved in 56 percent of the crash cases analyzed. ''Recognition failure'' in this study meant: (1) Improper lookout, including faulty visual surveillance and ''looked but did not see;'' (2) inattention, including preoccupation with competing thoughts; (3) internal or (4) external distractions, including attention to competing events, activities, and objects in and out of the vehicle. While driver-drowsiness/fatigue was found to be a certain or probable factor in 2 percent of the cases, 23 percent involved faulty visual surveillance, 15 percent involved inattention, and 13 percent involved distraction. The FMCSA believes the study is generally applicable to CMV drivers and their crashes because the agency believes both CMV and automobile drivers are susceptible to driving related problems associated with visual surveillance, inattention, and distraction.

More recent studies have also found high levels of inattention and distraction. In a study of nearly 700 Crashworthiness Data System (CDS) and GES crashes, Najm *et al.* (1995) determined that recognition errors were the primary causes of 45 percent of the cases studied, compared to 3.7 percent primarily due to driver drowsiness. General Motors scientists reviewed over 1,000 PARs from the State of Michigan, and reported that 17 percent were attributable to ''daydreaming'' and 18 percent to improper lookout, with just 1 percent due to ''dozing.'' Deering (May 17, 1994).

A recent study by the United States Coast Guard also suggests that direct measurement of fatigue may understate its true extent, U.S. Coast Guard (1997)(MSC 68/INF.11). Coast Guard researchers developed a ''fatigue index,'' based on the number of fatigue symptoms reported, and the number of hours worked and slept in the 24 hours prior to the incident. Using this formula increased the percentage of critical vessel cases categorized as fatigue related from 1.2 percent to 16 percent. Critical vessel cases involve significant property damage or the loss of the vessel. Critical casualty cases involve personnel injuries. For critical casualty cases, the fatigue index resulted in an adjustment increase from 1.3 to 33 percent. These reports indicate the need to be more expansive and inclusive when defining fatigue-related incidents, as well as the likelihood that fatigue statistics based solely on accident reports underestimate the true extent of the fatigue problem.

Fatigue increases the likelihood that a driver will not pay sufficient attention to driving or commit other mental errors. As discussed above, in-depth studies of crashes have found that inattention and other mental lapses

contribute to as much as 50 percent of all crashes. While fatigue may not be involved in all these crashes, it clearly contributes to some of them. The agency tentatively estimates that 15 percent of all truck-involved fatal crashes are ''fatigue-relevant,'' that is, fatigue is either a primary or secondary factor. This includes the 4.5 percent of fatal crashes where fatigue is directly cited, and another 10.5 percent where it contributes to other mental lapses, which then result in a crash. The FMCSA conducted some sensitivity analysis to determine the impact of different baseline levels of fatigue. Table 2 shows the FMCSA's estimate of the number of fatigue-related crashes by operational type.

TABLE 2.—ESTIMATED ANNUAL NUMBER OF FATIGUE-RELATED CMV FATALITIES AND INJURIES

	Local	Other	Long haul	Unknown	Total
Fatalities	61	166	480	49	755
Injuries	1,581	4,319	12,532	1,273	19,705
Fatal crashes					645
Injury crashes					13,519
Total	1,642	4,485	13,012	1,322	20,460

Long-haul operations account for two-thirds of all fatalities, excluding those for which the length of haul was unknown. Only one half of one percent of fatalities and injuries occur in a crash with a truck whose driver has been reported driving 12 or more hours, although, as discussed above, the true figure is likely to be higher.

Other research also indicates that local drivers are less likely to be involved in a fatigue-related crash than long-haul drivers. An analysis of the fatal crash rate and mileage figures from the University of Michigan Transportation Research Institute's (UMTRI) Trucks Involved in Fatal Accidents (TIFA) database and the Bureau of the Census' 1992 Truck Inventory and Use Survey (TIUS) shows a dramatic difference in the crash experience of local and other trucks. Local, single-unit straight trucks had an average of 0.0022 fatigue-related fatal involvements per 1000 registered trucks. The comparable figure for long-haul tractor-trailers was 0.0781, approximately 35 times greater. On a per-mile basis, long-haul trucks were almost 20 times more likely to be involved in a fatigue-related crash. Massie *et al.* (1997).

Time of Day

Without reliable exposure data disaggregated by operational type, it is difficult for the FMCSA to confirm that truck travel matches the crash distribution. The UMTRI analyzed the relationship between the risk of fatigue given a fatal accident involvement and the risk of fatigue per VMT, by truck body type and trip type, using VMT data from the TIUS. This analysis, which is partially reprinted in Appendix B to the Preliminary Regulatory Evaluation (PRE) that is in the docket and incorporated by reference in this NPRM, suggests that the relative risk of fatigue given a fatal accident involvement is a good predictor of the risk of fatigue per VMT. This is important because exposure data are not available for many relevant variables (such as time of day and hours driving).

Chart 1 shows the distribution of trucks involved in fatal crashes. It generally mirrors truck traffic, with a mid-afternoon peak when the data show truck travel to be the highest. Chart 2 shows the distribution of fatigue involvement, which is quite different than overall involvement in crashes. Fatigue peaks between 4 a.m. and 6 a.m. Chart 3 combines data from both Chart 1 and 2 to show the relative risk of a fatigue involvement, given that a fatal crash occurs. Chart 3 closely resembles Chart 2, indicating that the incidence of fatigue is more variable than that of crashes. Relative risk looks the same for both long-haul and other trucks. Chart 4 shows that both types of operations have peak relative risks between 4 a.m. and 6 a.m.

There is no significant difference between the time of day distribution of straight and combination trucks.

Hours Driving

Chart 5 shows the relative risk of a fatigue-related fatal crash by the number of hours of driving. Data on hours driving up to 1992 came from phone interviews and from the FHWA's form MCS–50T accident reports. Motor carriers involved in certain accidents were required to complete these forms up to 1992. Since elimination of the requirement to file MCS–50T accident reports in 1993, data on hours driving come entirely from phone interviews by UMTRI researchers. The interview source is the owner of the truck, so the agency expects some under-reporting for hours above the current limits. About one quarter of all respondents refused to answer this question, much higher than the percent missing for any other question. Nonetheless, the data clearly show the impact of extra hours driving on the likelihood of fatigue being cited in a crash.

Not surprisingly, risk increases with time driven. Approximately 20 percent of the fatal crashes per year where fatigue is coded as a factor involve the driver being behind the wheel for 13 or more hours. There also appears to be a slight increase in the risk of fatigue-related crashes at 5 hours. This is difficult to discern in the following chart, but becomes apparent when looking at risks for long-haul drivers. Jovanis *et al.* (1991) found a similar pattern in their examination of crashes from one long-haul carrier, including both a bump at 5 hours and a more dramatic and consistent increase in crash risk after 8 hours. Lin *et al.* (1993). Lin noted a limitation in their analyses, and provide a caveat to the estimates of the odds ratios in the last driving hour category—a large number of non-crash trips are completed during the 8th or 9th hour of driving, but the authors' ''assumed failure time,'' defined as the expected time of involvement in an accident, would occur after this trip completion time.

As noted above, long-haul trucks are involved in about 67 percent of all fatigue-related truck crashes. These vehicles also have a greater relative risk of fatigue involvement for almost any given number of hours driving. Chart 5 would not appreciably change if vehicles were broken down by trip type, except when hours driving exceed 11, where the small numbers of crashes yield some extremely high relative risk values.

The distribution of crashes by vehicle type is not so clear-cut. Two-thirds of all trucks involved in fatal crashes between 1991 and 1996 were combination vehicles, including both tractor semi-

trailers and straight trucks pulling a trailer. These vehicles were also involved in four-fifths of all fatigue-involved fatal crashes, only slightly higher than the percentage of all fatal truck crashes. This suggests that truck body type is a good proxy for predicting fatigue.

Long-haul combination vehicles account for about half of all fatal CMV crashes, but three-fourths of all trucks in fatigue-involved fatal crashes. Straight trucks in long-haul operations are more likely to be fatigue involved; although they represent just 7 percent of trucks involved in fatal crashes, they account for 14 percent of fatigue-involved trucks. The relative risk for drivers of these vehicles is almost 2, while it is closer to 1.5 for drivers of combination vehicles in long-haul operations. This over-representation may be partly due to drivers of straight trucks being unaccustomed to the rigors of long-haul operations.

Injury Crashes

Data on non-fatal crashes are even more limited than for fatals. All the factors militating towards under reporting of fatigue in fatal crashes are even more prevalent in non-fatals. In addition, because the best estimate of the number of non-fatal truck-involved crashes is based on a sample rather than a census (as is the case with fatal crashes), the FMCSA is not able to segregate these crashes by carrier operational type. Therefore, for this analysis, the agency uses the ratio of all injury crashes to fatal crashes as a proxy for fatigue-related injury crashes. The agency has also estimated that injury crashes follow the same patterns as fatal crashes, with overall crashes higher in the afternoon and fatigue-related crashes peaking between 4:00 a.m. and 5:00 a.m.

To evaluate the consistency between fatal and injury crashes, the agency examined injury-crash data from Texas. The agency chose to review Texas for a number of reasons. First, it typically ranks among the highest in terms of fatal truck crashes, ensuring that the agency would have a large sample to analyze. Second, Texas reports a high proportion of fatigue in fatal truck crashes, which suggests the State is better at reporting fatigue. This analysis shows that injury crashes generally mirror the fatal crash distribution by time of day. No data are available on injury crashes by hours driving. Based on Texas' reports and the analysis of the general mirroring of injury crashes to fatal crash distribution, the FMCSA has determined that the distribution of injury crashes, both overall and fatigue-related, would follow the pattern exhibited by fatal crashes. The complete analysis has been placed in the docket.

This analysis does not include property damage only (PDO) crashes. We were not able to find any reliable information on PDO crashes by trip distance, hours driving, or time of day. The FMCSA also believes that fatigue-related crashes tend to be more severe than non-fatigue-related crashes, so the number of fatigue-related PDO crashes is probably small. In any case, the damage from PDO crashes, whether fatigue related or not, is, by definition, minimal. In an analysis in another rulemaking, the FMCSA estimated that the average truck involved PDO crash costs society between $5,000 and $10,000. RIN (Regulatory Identification Number) 2125–AD27, Docket FHWA–1997–2222. To the extent that there are a sizable number of PDO crashes which would be affected by this proposal, overall benefits would be greater than the agency's estimate. See the PRE in the docket for a complete discussion of injury crashes. See the section headed ''XII. Rulemaking Analysis and Notices'' for more information about RINs.

The FMCSA invites comment on any aspect of the safety problem, the data and estimates used by the FMCSA, and the conclusions reached as a result of the analyses. Please provide with your comments all data, studies, and reports you rely upon that you believe the FMCSA should use.

IV. A Brief History of the Hours-of-Service Rules

The following is a brief history of the HOS rules. The docket contains a more complete discussion of the rules and their relationship to the Fair Labor Standards Act (FLSA) and implementing regulations.

A. The ICC's Original Rules

The Motor Carrier Act of 1935 (MCA) (Public Law 74–255, 49 Stat. 543, August 9, 1935), in addition to authorizing far-reaching economic regulation of the trucking industry, directed the ICC to establish qualifications and maximum hours of service for drivers working for private and for-hire interstate property carriers and for-hire interstate passenger carriers. This authority is now codified at 49 U.S.C. 31502.

The ICC published its safety proposals, including HOS limits, on July 8, 1936 (1 FR 738). In preparing its draft rules, the Commission examined all State HOS laws and regulations and solicited input from motor carriers and drivers. A formal rulemaking action, including hearings, was conducted before Division 5 of the ICC. (*Hearings:* 1 FR 1015, August 7, 1936; 1 FR 1510, October 2, 1936; 1 FR 2161, December 18, 1936.) On December 29, 1937, the ICC promulgated its final HOS regulations (effective July 1, 1938), along with detailed findings and explanations (3 M.C.C. 665, 3 FR 7, January 4, 1938). Concerning drivers' need for off-duty time, the ICC found:

> It is obvious that a man cannot work efficiently or be a safe driver if he does not have an opportunity for approximately 8 hours sleep in 24. It is a matter of simple arithmetic that if a man works 16 hours per day he does not have the opportunity to secure 8 hours sleep. Allowance must be made for eating, dressing, getting to and from work, and the enjoyment of the ordinary recreations. 3 M.C.C. 665, at 673 (1937).

Under the regulations adopted by the ICC, motor carriers could not permit or require drivers to be on duty more than 15 hours out of 24; drivers were thus allowed at least 9 hours off duty every day. The limit was designed to give them an opportunity for a minimum of 8 hours of sleep. Within the 15-hour on-duty period, the ICC set a 12-hour maximum daily work period for drivers. Work was defined as ''loading, unloading, driving, handling freight, preparing reports, preparing vehicles for service, or performing any other duty pertaining to the transportation of passengers or property.'' The ICC intended the 3-hour difference between 15 hours on duty and 12 hours of work to be used for meals and rest breaks. The Commission also set a weekly on-duty limit of 60 hours in any 7 consecutive days or 70 hours in 8 consecutive days.

B. Immediate Changes to HOS Rules

Within a short time, however, representatives of organized labor (including the American Federation of Labor, the Teamsters, and the Machinists) petitioned for a stay of the original regulations. A few motor carriers made a similar request. The ICC agreed, and oral arguments were heard again. Labor wanted HOS limits of 8 hours per day and 48 hours per week.

The ICC commented that:

> [T]here was no statistical or other information which would enable [us] to say definitely how long a driver can safely work. However, at the argument before us, the labor representatives particularly stressed the 15-hour limitation, contrasting such a tour of duty with the 8-hour day which is now so generally recognized as the normal standard for workers. The evidence before us clearly does not suffice to enable us to conclude that a duty period as low as 8 hours in 24 is required in the interest of safety. We may call attention, as did the division, to the contrast between factory operations, generally sustained in character, and the operation of busses and trucks, generally characterized by frequent stops for refreshments, gas, or rest,

or because of conditions encountered in highway and street traffic. The monotony or nervous and physical strain of driving such vehicles is alleviated by these breaks in the periods devoted to driving, and the period of actual work is considerably below the period on duty. 6 M.C.C. 557, at 561 (July 12, 1938)

The Commission ultimately decided to change the 12-hour work limit in 24 hours to a 10-hour driving limit in 24 hours. Motor carriers were required to give drivers 8, rather than 9, consecutive hours off duty each day. That meant drivers could be kept on duty as much as 16 hours out of 24; the specific daily on-duty limit was rescinded. The 60- and 70-hour limits were unchanged (3 FR 1875, July 28, 1938). The ICC remarked that these rules were somewhat less flexible than the original HOS regulations, but considerably more flexible than the standards requested by organized labor. ''[A]s the great bulk of the trucking operations covered by these regulations are conducted on a 6-day basis,'' the report said, ''the practical effect of the weekly limitation is to provide a 10-hour day.'' 6 M.C.C. 562 (1938). The Commission reiterated a similar point elsewhere in its report on the amended rules.

[I]t was strongly urged upon us [the ICC] that the daily and weekly maxima prescribed by division 5 would make it difficult to negotiate contracts for shorter hours, or for unorganized labor to hold the hours it has. It was said that already carriers have used the regulations prescribed in the prior report as a means of lengthening hours. Considerations other than those with which we may properly deal enter here, though we look with distinct disfavor on carriers or others who use regulations premised on safety as a means of defeating employees' efforts to improve their economic status. It is questionable, however, whether the practice has been or will be a serious one. The fact that we hereinafter prescribe 60 hours on duty as the weekly maximum should not interfere with the negotiations by organized labor of contracts providing for shorter hours. 6 M.C.C. 557, at 560 (July 12, 1938).

The ICC's hope that the HOS rules would not be used to lengthen drivers' hours has not been borne out. That is a matter of some importance, since the FLSA, which generally required overtime pay after July, 1945 for more than 40 hours of work per week, included an exemption for motor carriers subject to the ICC's regulations. Amended only slightly, the exemption remains in effect today at 29 U.S.C. 213(b):

(b) Maximum hours requirements:

The provisions of section 207 of this title [Maximum hours] shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49 * * *.

The result is that truckers engaged in interstate commerce work some of the longest hours known in this country, without the opportunity for time-and-a-half overtime pay beyond the 40th hour.

On October 22, 1938 (3 FR 2533), the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) published regulations (29 CFR part 516) implementing section 11(c) of the FLSA (29 U.S.C. 211(c)). These regulations require motor carriers subject to the minimum wage provisions of the Act—which includes carriers subject to the jurisdiction of the ICC (and now the FMCSA)—to make, keep, and preserve time records showing when drivers start and stop work, as well as the total number of hours they work per day and week.

C. 1962 Amendments

The first, and in fact the only, fundamental change to the HOS rules since the late 1930's occurred in 1962 (89 M.C.C. 19, March 29, 1962, 27 FR 3553, April 13, 1962). For reasons it never explained clearly, the ICC retained the 8-hour off-duty requirement and the 10-hour driving limit, but dropped the 24-hour limit. This had profound effects. For example, a driver who came on duty and started driving at 12:01 a.m. Monday would have to stop driving at 10:00 a.m. If the driver then took 8 hours off duty, he or she could drive again from 6:00 p.m. to midnight, for a total of 16 hours on Monday. The previous rule would have limited the driver to a total of 10 hours driving time in any 24-hour period. The unintended consequences of this change are described below.

D. Exemptions

The 1938 revisions to the HOS rules were barely in place when the first request for an exception was filed. Several industry associations argued that the 10-hour driving limit should be extended when bad weather made it impossible to complete a normal run in 10 hours. The ICC allowed an extra 2 hours for ''unfavorable weather conditions.'' See 11 M.C.C. 203, January 27, 1939, 4 FR 475, January 31, 1939. This exception, slightly modified, is still available (49 CFR 395.1(b)(1) Adverse driving conditions). Other requests followed over the years; the exceptions granted by the ICC are codified at 49 CFR 395.1(b)(2) Emergency conditions, (c) Driver-salesperson, (d) Oilfield operations, (e)100 air-mile radius driver, (f) Retail store deliveries, (g) Sleeper berths, (h) State of Alaska, (i) State of Hawaii, and (j) Travel time.

On July 30, 1991 (57 FR 33638), the FHWA published a final rule exempting motor carriers and drivers from most of the Federal Motor Carrier Safety Regulations (FMCSRs), including the HOS rules, while providing emergency relief during a declared regional or local emergency, and more limited relief for tow truck drivers responding to a police request to move wrecked or disabled vehicles (49 CFR 390.23). The emergency relief provision required drivers who had been on duty more than 60 hours in 7 days, or 70 hours in 8, while providing direct assistance to emergency relief efforts, to take 24 hours off duty before returning to normal driving in interstate commerce.

On August 19, 1992 (57 FR 37504), the agency published a proposal to permit drivers to begin anew any on-duty period of 60 hours in 7 days or 70 hours in 8 days upon taking 24 consecutive hours off duty. The FHWA made this proposal to provide opportunities for improved efficiency in operations consistent with highway safety. On February 3, 1993 (58 FR 6937), the FHWA withdrew the proposal, having received virtually no substantive responses to the critical questions asked. Most of the 68,000 comments offered opinions unsupported by empirical (or even anecdotal) material. Except in general terms, there were no discussions of potential impacts on highway safety. The agency needed to know if 24 hours is sufficient time for a driver to obtain the rest necessary to resume driving safely after accumulating 60 to 70 on-duty hours in as short a period as 4.25 days. This question remained unanswered until the completion of Canadian studies (O'Neill, T. et al. (1999) and Smiley, A. & Heslegrave, R. (1997)). The agency discusses these studies later in this document.

Citing the waiver authority enacted as part of the Motor Carrier Safety Act of 1984 (MCSA) (Public Law 98–554, October 30, 1984)(Sec. 206(f), 98 Stat., at 2835), representatives of many industries either filed petitions for waivers of the HOS regulations or contacted the agency about the possibility. Among the carriers requesting exemptions were those involved in utility operations (electricity, natural gas, television), farming and farm supplies, construction, drilling of blast holes for rock quarries, highway traffic marking, custom harvesting, ground water drilling, and transporters of produce, cement, and ready-mix concrete. The FHWA granted none of these requests

because the proponents were unable to provide the agency with sufficient data to show that the waiver would meet the statutory test: (1) Not contrary to the public interest and (2) consistent with the safe operation of CMVs.

Section 345 of the National Highway System Designation Act of 1995 (Public Law 104–59, 109 Stat. 568, 613) (NHS Act) created a statutory exemption from all of the HOS provisions for individuals transporting crops and farm supplies during planting and harvesting seasons, and a more limited exemption (from the 60- and 70-hour rules) for drivers of utility service vehicles, CMVs transporting ground water well drilling rigs, and construction materials and equipment. The FHWA, however, was authorized to conduct rulemaking on the advisability of each of these exemptions (except that for water well drilling rigs). If the agency determined that an exemption would not be in the public interest and would have a significant adverse impact on the safety of CMVs, the exemption could be blocked before it went into effect, modified or revoked. The NHS exemptions apply only to drivers and motor carriers operating in interstate commerce, and the Act specifically denied preemptive effect to any of the exemptions. The States, therefore, are free to adopt or reject any of the HOS exemptions, whether for interstate or intrastate commerce, without jeopardizing their eligibility for Motor Carrier Safety Assistance Program (MCSAP) funding. The FHWA adopted all of the required exemptions on April 3, 1996 (61 FR 14677) (see 49 CFR 395.1(k) Agricultural operations, (l) Ground water well drilling operations, (m) Construction materials and equipment, and (n) Utility service vehicles), but deferred until a future date any rulemaking action to consider modifying or revoking them.

While this notice was being prepared, the FHWA received a petition from the Advocates for Highway and Auto Safety (AHAS) seeking rulemaking to reevaluate the 1996 exemptions. By this NPRM, the agency is granting the AHAS petition, which has been placed in the docket. The agency will also be consolidating the Regulatory Identification Number (RIN) 2126–AA29 (formerly 2125–AE09) into this action. See the section headed ''XII. Rulemaking Analysis and Notices'' for more information about RINs. The FMCSA is proposing to modify the agricultural exemption and revoke all but one of the other NHS Act exemptions. Because Sec. 345 does not authorize rulemaking to reevaluate the exemption for ground water well drilling rigs, it will remain in effect. The utility and construction exemptions, however, would be revoked, and those operations would be required to comply with the proposed ''weekend'' provisions of the HOS rules for Type 4 or 5 operations, described in detail below.

E. Developments in the 1970's and 1980's

In 1970, when Congress authorized funds to be spent on research, the FHWA, which had then assumed the safety responsibilities previously exercised by the ICC, initiated inquiries into drivers' hours of service and fatigue. The research and subsequent rulemaking continued for the next ten years. On February 12, 1976, the FHWA published an ANPRM that discussed three possible options for regulatory revisions (41 FR 6275). Because the agency did not receive sufficient information to determine whether the HOS should be amended, it published a second ANPRM on May 22, 1978 (43 FR 21905) inviting comments on three different regulatory options. After reviewing the comments to the second ANPRM, as well as transcripts from six public hearings that generated more than 9,000 pages of testimony from 1,200 interested parties, the FHWA determined that none of the proposed regulatory options could be supported in its entirety. The FHWA then developed three new proposed HOS options and carried out detailed cost-effectiveness and other regulatory analyses as required by Executive Order 12044 (1978).

Option I would have reduced the 10-hour driving limit to 8 hours, among other things. Option II would have eliminated the differences in time allowances for driving time, on-duty time, and duty tour by specifying each have a limit of 12 hours, among other things. Option III would have maintained the status-quo regulations, with one exception: it would have banned driving between midnight and 6:00 a.m.

The cost to society of Option I was estimated to be $11.496 billion and its benefits to society to be $450 million. The cost of Option II was estimated to be $10.642 billion and its benefits $450 million. The cost of Option III would have been $11.019 billion and its benefits $63 million. The rulemaking was terminated on September 3, 1981.

V. Comments to the ANPRM

The FHWA published an ANPRM to amend the HOS regulations on November 5, 1996 (61 FR 57252). This action was mandated by section 408 of the ICC Termination Act (Public Law 104–88, December 29, 1995, 109 Stat. 803, 958). The FHWA nearing completion of several research projects and sought the results of other relevant research to consider in this effort. The FHWA requested comments on the current HOS regulations and sought assistance in locating any other relevant information, including research, operational tests, or pilot regulatory programs conducted anywhere in the world, that could be used in developing revised HOS rules for CMV drivers.

The agency received 1,650 comments in response to the ANPRM. The strongest support for amending the rules came from truck drivers, although no demand for major increase or decrease in hours emerged from their comments. Many drivers commented they wanted to work fewer hours without loss in annual incomes, and many other drivers wanted to drive longer hours and earn higher annual incomes. The only major theme that most agreed on was that they would like to see the agency prohibit them from loading and unloading cargo.

The specific concerns or issues raised by the commenters who discussed technical or economic issues are addressed in the following sections. The respondents represented 13 advocacy groups, 3 consultants to the industry, 32 individuals, including concerned citizens and spouses of drivers, 1 insurance company, 4 labor unions, 3 law firms, 1,159 motor carriers (including owner/operators and drivers operating for motor carriers), 7 motor carriers of passengers, 49 trade associations (including 1 motor coach association), 1 truck driving school, 3 universities (including specific research departments of various institutions), 7 federal government agencies or representatives (including Senators Robb, Abraham, Specter, and Helms, Representative Cliff Stearns, and the NTSB), 4 state government agencies, 1 local government, and 33 other entities (including respondents of indeterminate affiliation).

Most respondents submitted comments that did not provide relevant scientific research or studies in support of their comments. The FMCSA considered additional comments submitted after the June 30, 1997, closing date.

Following are general comments on information contained in the docket.

1. In September 1997, after the June 1997 closing date, the docket contained 572 responses to the 69 specific questions asked in the ANPRM.

2. Of the 572 question-specific responses, 127 included submissions of,

or references to, a specific report, study, or survey.

3. Of the 1,650 comments analyzed, 731 were form letters to the docket. There were two different form letters; and none of these letters provided any relevant scientific research or studies to support the comments. The first form letter, received from 152 motor carriers in the construction industry, indicated that driver productivity is constrained by weather, the time of the year, and daylight hours. Furthermore, these carriers emphasized that they almost always operate within a localized geographical area, and concluded that drivers in the construction industry be exempt from the HOS regulations that govern over-the-road drivers. The FMCSA consolidated the figures for these 152 carriers and found they operated 5,614 single-unit, straight trucks and 1,734 truck tractors. See Table 3.

TABLE 3.—152 CONSTRUCTION INDUSTRY COMMENTS

Comment	Minimum	Maximum	Average per carrier
Typical Trip Miles	2 miles	700 miles	43.55 miles.
Typical Trip Time	0.02 hours	12 hours	1.89 hours.
Total Trips (over 3 years)	0 trips claimed	1,000,000 trips	101,107 trips.
Total Miles (over 3 years)	60 miles	21,744,000 miles	2,232,038.89 miles.
Accidents (over 3 years)	0 accidents	58 accidents	3.31 accidents.

A second form letter was submitted by drivers in the form of a survey. All respondents submitting these form letters indicated support for a change in the FMCSA HOS regulations. They also provided no relevant scientific research or studies to supported comments.

Comments Identifying Potential Science-Based Alternatives

All comments citing research studies as their basis for comments are discussed in this section. They are presented according to the regulatory elements they address.

Off-Duty Time

The Insurance Institute for Highway Safety (IIHS) recommended a minimum of 12 to 14 hours off duty per day, citing Wylie, C.D. et al. (1996) (the FHWA's Driver Fatigue and Alertness Study). The IIHS believes the rules must require a 14-hour minimum off-duty time after a driver has driven in the time period midnight through 6:00 a.m.; it bases this comment on Miller (1993). In a meeting on September 23, 1998, IIHS and National Safety Council officials came to the FHWA to discuss various HOS concerns. At that meeting, IIHS recommended a minimum 14-hour off-duty period, citing Lin et al. (1994, 1993), Jones and Stein (1987, 1989), Frith (1994), Saccomanno et al. (1996), NTSB (1995), and Summala and Mikkola (1994). IIHS provided copies of these studies and the FHWA/FMCSA filed them in the docket along with a summary of the meeting.

The American Trucking Associations, Inc. (ATA) and Landstar Systems, Inc. support 10 hours per day off duty, also citing Wylie, C.D. et al. (1996). The International Brotherhood of Teamsters (IBT) recommends 9 hours off duty per day citing NTSB, (1995), while the National Sleep Foundation (NSF) presented a Department of the Army aviation study, Caldwell, J. (1997) and Belenky, G. (1994), suggesting that aviators obtain an average of 7 hours of sleep during a 24-hour period.

''Re-start'' Provisions (e.g., 24 Hour, 36 Hour, etc.)

The ATA believes the FMCSA should implement a re-start provision and offered Woodward and Nelson (1974) and Krueger et al. (1987) to support its assertion that a 24-hour ''re-start'' after 36 to 48 hours of high workload is desirable.

Sleeper-Berth Use

The California Highway Patrol (CHP) believes Wylie et al. (1996) suggest that sleeping facilities, other than sleeper-berth equipment meeting the requirements of 49 CFR 393.76, would make enforcement difficult by requiring officers to determine whether alternate locations qualify as adequate sleep/rest locations.

The AHAS believes short sleeper-berth periods should not be allowed to count toward minimum off-duty requirements and bases that comment on Wylie et al. (1996). AHAS recommends that crediting split sleeper-berth periods toward the 8-hour off-duty period be prohibited, also based on its interpretation of Wylie et al. (1996).

The ATA and the Distribution and LTL Carriers Association (DLTLCA) support the continuation of sleeper-berth-type provisions, i.e., split sleep periods or dividing a consecutive off-duty period into two or more smaller periods with duty in between, citing Chiles (1968). The National Sleep Foundation (NSF) supports the continuation of sleeper-berth-type provisions, basing its position on work by Caldwell, J. (1997), Belenky, G. (1994), Bonnet (1994), and Dinges and Broughton (1989). The NTSB, citing research by Dinges (1989), and the IBT, citing NTSB (1995), however, oppose sleeper-berth-type off-duty hours.

The Owner-Operator Independent Driver's Association (OOIDA) surveyed its members before it responded to the ANPRM. Its study, OOIDA (1997), shows 28 percent of its members split their off-duty time. A similar ATA survey, ATA (1997), shows that most driving teams split their sleep periods into 4 hours on duty and 4 hours off duty. The OOIDA survey shows that single drivers average 3 hours 52 minutes for the first sleeper berth period and 4 hours 20 minutes for the second.

The ATA survey shows 5 percent of team drivers use the sleeper berth while the CMV is in operation. The OOIDA survey shows a figure of 11 percent for team drivers, and also reports that these team drivers obtain an average of 5 hours 38 minutes driving and 5 hours 14 minutes of rest in each off-duty sleeper-berth period.

Rest Breaks or Napping

The AHAS and the ATA recommend that the regulations require the practice of taking naps during long trips. AHAS cited Wylie et al. (1996) and ATA cited its own survey, ATA (1997).

On-Duty Time

The OOIDA believes findings in Wylie, et al. (1996) support its recommendation for the FMCSA to allow a maximum of 15 hours per day on duty. ROCOR Transportation favors between 14 and 15 hours maximum on duty time, and also cites Wylie, et al. (1996). The ATA and Landstar Systems, Inc. recommend 14 hours on duty time with no distinction between the driving and on-duty times and bases its recommendation on Wylie, et al. (1996) and Harris, et al. (1972).

Driving Time

The CHP believes Wylie et al. (1996) shows that 10 hours driving time is not

excessive if managed properly. Citizens for Reliable and Safe Highways (CRASH) recommends a maximum of 10 hours driving time in a 12-hour on-duty time period, citing Fuller (1983), Lin et al. (1993), and Jones and Stein (1987). In the meeting on September 23, 1998, discussed above under the subheading ''off duty time,'' IIHS also recommended a maximum 10-hour driving period, citing the same studies, Lin et al. (1994, 1993), Jones and Stein (1987, 1989), and three additional studies, Frith (1994), Saccomanno et al. (1996), NTSB (1995), and Summala and Mikkola (1994). An IIHS official also stated during that meeting that the IIHS could accept an increase in driving hours if the IIHS could be assured the drivers would be afforded more hours off duty.

Weekly On-Duty Limits

The OOIDA cites Wylie et al. (1996) as support for its assertion that the weekly on-duty limit be eliminated. Vallenduuk Tissingh Advocaten (VTA) of the Netherlands cited a European regulation and contended the FMCSA should adopt the European example of allowing 84 hours on duty while limiting driving up to 56 hours. The ATA believes Wylie, et al. (1996) and Mackie and Miller (1978) support the current 60- and 70-hour rules.

Do Wage Methods Affect HOS?

The AHAS favors elimination of the section 13(b) exemption to the Fair Labor Standards Act and cites NTSB (1995), NTSB (1990), and Braver et al. (1992) as the basis for its assertion. The NTSB believes a link between payment by the mile and HOS violations is shown by its 1995 research study. CRASH cites Beilock (1995) as support for its suggestions that the FMCSA should incorporate compensation systems allowing drivers to generate reasonable and adequate incomes while upholding the law. VTA cites University of Groningen research (1986) showing drivers in Europe who are paid monthly salaries have fewer HOS violations than drivers paid by distance traveled.

On-Board Monitoring Devices

The IIHS cites its own research study, IIHS (1995), as well as Stein (1994) and Gronemeyer (1994), as the basis for its recommending a requirement for on-board monitoring devices. The NSF cites Braver et al. (1992), NTSB (1990), and IIHS (1995) as the basis for requiring such devices. The ATA cites Penn and Schoen (1995) in its assertion that on-board monitoring devices should not be required. Six comments provided cost estimates, although only two of the six comments cited cost estimates based on studies, specifically IIHS (1995) and Penn and Schoen (1995). The other four cost estimates came from the Log Truckers Association of Montana, John Cheeseman Trucking, Inc., ROCOR Transportation, and Rockwell Transportation Electronics. ROCOR stated it had 2,000 units in use costing about $3,000 per unit. It estimated a higher cost for smaller motor carriers. Though the other commenters did not state the basis for their estimate, the FMCSA presumes they are based on past business decisions or marketing and sales information.

Types of Motor Vehicles Included

The OOIDA cites Wylie et al. (1996) in asserting that the driving time limits should be applicable only to motor vehicles over 4,537 kg (10,000 pounds). The OOIDA believes the FMCSA should not propose any new regulations defining ''driving time'' applicable to motor vehicles up to 4,537 kg, because it believes Wylie et al. (1996) found that hours of driving are not a strong or consistent predicator of observed fatigue.

Adverse Weather

CRASH does not believe a driver should be allowed to continue to drive an extra two hours when the driver encounters adverse weather conditions after being dispatched, citing Fuller (1983), Lin et al. (1993), and Stein and Jones (1987). The OOIDA, on the other hand, cites Wylie et al. (1996) as support for its belief that the FMCSA should retain the ''adverse weather rule'' provision allowing drivers an extra two hours because, in such circumstances, drivers sometimes have difficulty finding adequate parking.

Bobtailing En Route

The OOIDA believes that Wylie, C.D. et al. (1996) shows that drivers should be allowed to bobtail to motels and restaurants while off duty in the vicinity of en route stops. Bobtailing, in the context provided in question 17 of the ANPRM, means a single tractor CMV operating without a trailer coupled to it. (Bobtailing can also mean the operation of a straight truck in certain industries or parts of the country. The FHWA did not ask any specific questions regarding research data related to use of CMVs for travel to motels and restaurants while off duty in the vicinity of en route stops, although a regulatory interpretation currently allows the practice.)

Provisions Relating to Circadian Rhythms

The AHAS cites Harris (1977), Hamelin (1980, 1981, 1987), Mackie and Miller (1979), Hertz and Eastham (1986), and Moore-Ede et al. (1988) as the basis for its assertion that any new FMCSA regulations must do the following three things:

1. Prevent rapidly rotating shifts.
2. Avoid scheduling that results in a long driving day ending deep within the early-morning circadian trough.
3. Limit the number of consecutive hours that CMV drivers must drive if assigned to nocturnal driving.

The IIHS, NTSB, and the NSF believe a circadian-based provision should be proposed, citing Moore-Ede et al. (1986), Gold et al. (1986), McDonald (1984), Tepas and Monk (1987), Caldwell (1997), and Akerstedt, T. (1995), but they offered no specific suggestions.

Restriction On Early-Morning Driving Time

The ATA cites Wylie et al. (1996) as the basis for its assertion that the FMCSA should not restrict early-morning driving time. The IIHS and NSF cite Rosa and Colligan (1988), Kogi and Ohta (1975), Caldwell (1997), and Akerstedt, T. (1995) to support their belief that early-morning driving time restrictions should be proposed.

Exemptions, Variations, and Customizations

The AHAS opposes all exemptions from HOS regulations that could allow longer daily driving hours, shorter off-duty rest periods, or other relief that fails to incorporate the same health and safety protections afforded long-haul drivers. The AHAS cited NTSB (1995) in support of its argument. The AHAS contends that the FMCSA has no research of record on the following topics: comparisons of long-haul versus short-haul fatigue-related crashes; sleep quality; and other considerations of alertness or performance deficiencies associated with differences in acute or chronic sleep deprivation, including differences identified from a comparison of long-haul and short-haul CMV driving.

The Associated General Contractors of America (AGCA) submitted AGCA (1997) showing that construction industry drivers have short trips and a short seasonal operation period. The AGCA believes this study supports its contention that its member firms are not engaged in long-haul truck driving and should therefore be exempt from any HOS regulations. The National Ready Mixed Concrete Association (NRMCA)

believes that Wylie, et al. (1996) support that industry's request for an HOS exemption. The NRMCA also submitted its own survey (NRMCA (1997)) stating that drivers in its industry drive CMVs only 44 percent of their [working] time, that they average 22 miles per round trip and they drive an average of 21,024 miles per year.

The Utility Solid Waste Activities Group and Virginia Electric and Power Company argue that the findings of Bowen, V. (1996) support the need for a utility industry exemption. They submitted both the study and a petition for an exemption.

Consignor and Consignee Responsibility and Accountability

The OOIDA cites OOIDA (1997) as the basis for its support for heavy fines for consignors and consignees responsible for drivers violating the regulations.

Loading and Unloading Freight

The AHAS cites Wylie et al. (1996) to show loading and unloading freight should be classified as on-duty time. It argues that eliminating such duties from a driver's responsibilities would justify reduction of total driving and duty time from 15 hours to a more reasonable period of time, such as 12 hours.

The OOIDA cites OOIDA (1997) showing that 42 percent of responding drivers record loading and unloading time as off duty. The same survey shows 74 percent would record such time as on duty-not driving if the drivers were paid a reasonable amount for such services.

Consignor and Consignee Delays

The OOIDA (1997) survey shows 80 percent of responding drivers are not paid for time waiting while delayed by consignors and consignees. Seventy-three percent of responding drivers record consignor and consignee delays as off-duty time, while 66 percent would record such time as on duty-not driving if they were paid a reasonable amount for such delays.

Performance-Based Regulation Feasibility

The ATA believes the FMCSA should propose a program for HOS performance similar to the fatigue management demonstration project undertaken in Queensland, Australia and discussed in a paper authored by Gary Mahon of Queensland Transport. The ATA noted in its comments that the province of Alberta, Canada was also considering a fatigue management demonstration project. Alberta and Queensland have ongoing pilot programs within limited geographical areas. According to a discussion paper on the Queensland program that the FMCSA has received:

> The Queensland Fatigue Management Program (FMP) is designed to control all the factors that cause fatigue. The FMP takes into account more than just the number of hours spent driving. FMP operators enter into an accreditation agreement with Queensland Transport. This agreement sets out the conditions of the program and allows operators to operate outside the Truck Driving Hours Regulations. This is the incentive to take part in the program. The FMP Standards attempt to assist the operator with managing all of the factors that impact fatigue including: scheduling, rostering, driver health, workplace conditions, fitness for duty, time off, and management systems to operate the FMP etc. In order to operate under the FMP, the operator must develop and implement management systems and procedures that will allow them to meet the standards and to achieve the level of performance that is required. Enforcement occurs when operators fail to reach those standards and are disaccredited (sic) from the program.[1]

The IIHS does not believe fitness-for-duty and other performance measurement devices have been adequately tested and validated. They suggest review of Williamson et al. (1996), Mausner and Braun (1974), and Lilienfeld and Stolley (1994) to avoid false negatives and false positives, while also accounting for environmental variables such as traffic congestion and weather conditions, before opting for performance requirements.

The NSF also does not believe fitness-for-duty and other performance measurement devices are feasible and operationally practical at the present time. The NSF suggests review of Dinges (1995), Horne and Reyner (1995), Valley and Broughton (1983), and Dinges and Kribbs (1991) before requiring ''drowsy driving detection devices'' and that such devices may lead to a false sense of security for those drivers who would rely solely on them to detect declining alertness. The NSF believes one does not have to fall asleep to be a danger to oneself and others.

VI. FMCSA Response to Comments and Research Cited

One of the foremost goals of this rulemaking is to reduce the number of CMV drivers and others killed and injured in crashes. In formulating new rules, the FMCSA must consider persuasive evidence and reliable data. Most CMV drivers and other commenters did not have access to research concerning technical or economic aspects of fatigue, alertness, off-duty, on-duty, or driving time. The agency appreciates all the information provided by the responders, and the serious comments reflecting both experience and interpretations of the many studies, research reports, and surveys cited. It would not be useful to take issue with the information and comments provided in the abstract. Rather, the FMCSA reviewed these issues and comments in the context of developing its proposal. The remainder of this preamble will focus on those issues in relation to the development of the proposal. The agency, however, has not ignored the concerns of drivers and other commenters whose personal experiences have led them to support changes to the HOS regulations.

Fatigue Management Programs or Plans

Although the FMCSA is not proposing any regulations specifically dealing with Fatigue Management Programs or Plans, the agency is not ruling them out. There is still much to learn about such alternatives to prescriptive HOS regulations, and the FMCSA has been very interested in the experience of other countries in their implementation. Within the DOT, moreover, the Federal Railroad Administration is initiating fatigue management programs for selected railroads. As suggested by the IIHS and the NSF above under the discussion of *Performance-based Regulation Feasibility*, more study is needed before such alternatives should be incorporated in the regulation of commercial highway operations.

The FMCSA continues to study the technology it believes is required to support such programs. Projects are presently under development to test at least two forms of technology in regular operations during this fiscal year. The agency believes that careful testing within the scope of pilot demonstration programs authorized under 49 CFR Part 381 (49 U.S.C. 31136[e]) would be the best way to investigate the feasibility of this promising approach to performance-based regulation in this area.

VII. Regulation Development Process

A. Research Findings

In developing this section, the FMCSA has relied on a large body of research dealing with work, fatigue, alertness, sleep cycles and other related matters. The FMCSA reviewed over 150 research studies and other documents, many of which were referred to by docket commenters or provided as attachments to docket comments. Many

[1] Abstract, *Australian initiatives in managing fatigue in transportation*, by Assoc. Prof. Laurence Hartley, Institute of Research in Safety & Transport, Murdoch University, South Street, Western Australia, Australia, in the Truck Safety Symposium 99, Steering Committee, June 3, 1999.

of the reviewed documents reported on research conducted on motor carriers and CMV drivers. Others, such as studies on shiftwork, sleep and performance, and the physiological nature of sleep, were judged relevant to the issue of CMV driver safety, even though they were conducted in other operational settings or in laboratory environments.

It must be noted that the conclusions drawn from this research were done from the perspective of commercial highway transportation. Although there are industries seeking exemptions from the HOS rules citing research studies in the docket concerning the performance of their drivers, e.g., utility, construction, and motorcoach industries, the FMCSA could find no research studies showing these drivers do not suffer from fatigue, do not need sleep daily, and have fewer fatigue-related crashes than other truck and bus drivers subject to FMCSA jurisdiction.

For example, as stated above, the Utility Solid Waste Activities Group and Virginia Electric and Power Company provided the Bowen (1996) study stating it supports the need for an utility industry exemption. Motor carriers participating in the study were a mix of FMCSA-regulated and non-regulated public utilities. The study used a sample of drivers who accumulated nearly five million miles of driving. Ninety crashes were reported (90 divided by 5 million miles = 18 crashes per million vehicle miles). The author relates (on page 15 of the report) ''*Based on this limited exposure [1731 hours of driving time reported], it seems that after 80 hours on duty [in a 7 day period], the accident rate rises precipitously.*''

The FMCSA notes that, although the Bowen study tracked exposure by both driving time and distance, there were no statistics presented aside from purely descriptive graphs and tables. No significance tests were discussed. No baseline data was presented. This concerns the FMCSA given the extremely high reported crash rate. The data was not analyzed to assess time-of-day effects. Bowen did not report the highway classes where the travel took place and this factor was not used to discriminate among portions of the data. The FMCSA believes that Bowen's study does not support that the utility industry's request for an exemption from the HOS rules.

It also must be noted that the conclusions drawn from all the research may not be consistently applicable throughout the transportation modes. The FHWA convened a panel of representatives of several agencies within the DOT to review the draft proposal from the perspective of the transportation modes regulated by those agencies. Although those representatives took no issue with any of the conclusions drawn from the research cited so far as truck transportation was concerned, they noted that in some cases, due to the difference in operating conditions and required adherence to various laws and treaties, the conclusions may not translate directly to other modes. Some examples are offered in the discussions that follow.

Studies germane to this NPRM and relied upon by the FMCSA are discussed in *An Annotated Literature Review Relating to Proposed Revisions to the Hours-of-Service Regulation for Commercial Motor Vehicle Drivers,* Freund, D.M., Office of Motor Carrier Safety, November 1999, Publication No. DOT-MC–99–129. That review, as well as a copy of each research study it discusses, has been placed in the docket.

The review sets the stage for the problem assessment with chapters covering research on the contribution of operator fatigue to highway vehicle crashes, in general, and the CMV driver fatigue contribution to CMV crashes, in particular. The review then focuses on research into the causes of drowsiness—lack of sufficient, quality sleep—and includes a chapter on the effects of sleep deprivation on alertness and performance, followed by one on naps as a sleep deprivation countermeasure. The review moves forward to address general considerations concerning HOS regulations, working conditions, and regulatory compliance before focusing on setting of schedules, shift rotation, and the special case of multi-day shifts. The final three chapters address outcomes of hours-of-service pilot tests and waivers, operational and performance models, and technological approaches to CMV driver alertness management.

As O'Neill and his co-authors of ''Understanding Fatigue and Alert Driving,'' a training course developed by the ATA in partnership with the FHWA, point out, ''Fatigue has several causes: (from) inadequate rest, sleep loss and/or disrupted sleep; from stress; from displaced biological [circadian] rhythms, excessive physical activity such as driving or loading [cargo], or from excessive mental or cognitive work.'' (ATA, p. 8).

The term ''circadian'' comes from the Latin words *circa dies,* or ''about a day,'' i.e., 24 hours. Circadian rhythms become displaced as a result of schedule irregularity that affects the time when people sleep. Adverse effects of sleep deprivation can occur when the opportunity to take sleep is curtailed, when people try to obtain sleep during periods of the day when their systems are in a more-active physiological state (such as during the mid-morning and early evening), or when environmental conditions are not conducive to obtaining sleep. The adverse effects include slower reaction times, poor and variable responses, deterioration of judgment, vigilance, and attention, and alertness. Loss of sleep can also produce subjective feelings of tiredness, loss of motivation, and deterioration of mood. (ATA, p. 7).

On the other side of the coin, long working hours (especially when the work demands vigilance and concentration) can contribute to fatigue and cause people (by their own choice, or as directed by others) to reduce the time they take for sleep. The converse of long duty hours is a shorter period of time remaining in a 24-hour period for sleep.

The maintenance of schedule regularity was an element of the original HOS regulations issued by the ICC. Until 1962, the HOS regulations limited driving and on-duty time in a 24-hour period. Although the on-duty time limit of 15 hours and the 8-consecutive-hour off-duty period were set in 1941, it is quite possible the actual off-duty period may have been slightly longer to comply with that 24-hour period. Thus, the 1962 rule change that introduced the requirement for driving and on-duty periods to be separated by an 8-hour off-duty period may have had two unintended effects: (1) It allowed drivers to be placed on a schedule that was irregular from a circadian standpoint and (2) it decreased the actual daily off-duty time provided to them.

As several researchers point out, there is a dual predicament with night workers: not only are they required to perform tasks during the time of day they are least able to from physiological and cognitive standpoints, they must sleep during the time of day their bodies are least receptive to it.

Recommendations From the Research

The research reviewed during the FMCSA's process of developing this NPRM suggests five main areas of consideration applicable to CMV drivers: (1) The work day should be more regular; (2) drivers should be afforded more opportunity for daily and weekly sleep; (3) working hours, including hours spent driving in any duty shift, should be limited to no more than 12 hours; (4) the time of day when

driving is performed or, conversely, when sleep may be obtained, should be considered; and (5) non-compliance by drivers and motor carriers increases the potential for adverse safety outcomes. Although not using identical terms, most of the comments also suggested these areas for prime consideration.

1. The Work Day Should Be More Regular: Maintenance of Circadian Rhythm

It has been well established that the hours of the day and night are not equivalent from the perspective of human alertness and safe, efficient, and productive performance of workplace tasks, Wylie, et. al. (1996); Brown, I.D. (1994); Campbell, K. (1988); Folkard, S. (1997); Hildebrandt, G., Rohmert, W., & Rutenfranz, J. (1974); Wylie, D. (1998); Akerstedt, T. (1991); Hildebrandt, G. (1976); Rutenfranz, J., Knauth, P., & Colquhoun, W. (1976); Vidac~ek, S. et al. (1986); Williamson, A.M. & Sanderson, J.W. (1986); O'Neill, et al. (1999); Akerstedt, T. (1997). Humans are biologically programmed to operate on a daily cycle of just over 24 hours. The cycles of daylight and darkness act as synchronizers (see Duffy, J.F. et al. (1996)). If people suddenly shift their wake-sleep cycles (e.g., when traveling across time zones), they must adjust to the new ones and become re-synchronized. This takes about one day per time zone crossed.

Many work environments must be staffed on a 24-hour basis, so workers are scheduled in shifts. Shiftwork can introduce another problem. A nightshift worker, required to sleep during periods of higher physiological activity and to be awake during periods of lower activity, may have difficulty adjusting to an inverted wake-sleep schedule and can accumulate a sleep debt that can seriously affect the level of performance and safety. Even when a consistent schedule is established and wake-sleep patterns are stabilized, it is generally recognized that physiological and performance levels reach the low point of their cycles in the hours after midnight and in the early to mid-afternoon. Therefore, night workers are most susceptible to the dual predicament mentioned above. Unless the night shift worker is able to obtain sufficient restorative sleep on a regular basis, the risk of substandard and potentially unsafe performance substantially increases.

2. The Driver Should Be Afforded More Opportunity for Daily and Weekly Sleep

Daily sleep. Each driver should have an opportunity for eight consecutive hours of uninterrupted sleep every day. The current rules require a minimum of eight consecutive hours off. Many motor carriers do not provide drivers more than the minimum 8 hours off duty, although the present regulations certainly allow them to do so, and many drivers accept tight schedules without objection. These drivers may have to commute home, eat one or two meals, care for family members, bathe, get physical exercise, and conduct other personal activities, all within their 8-hour off-duty period. The current rules also allow the 8-hour off-duty period to be split into two periods when rest is taken in a sleeper berth. One of the two periods may be as short as 2 hours.

To afford the driver an opportunity to obtain a minimum period of 8 hours to sleep, the research shows that the off-duty periods need to be increased. Nine hours off duty was originally required in 1937. For various reasons, organized labor objected to most of the original regulations, and upon further deliberation, the ICC reduced the 9-hour off-duty period to 8 hours in each 24 hours. 6 M.C.C. 557, July 12, 1938.

Several studies strongly suggest the FMCSA should require an even longer consecutive off-duty period than the 9 hours the ICC required in its original 1937 HOS regulations. To provide additional off-duty periods within the 24-hour cycle for necessary personal activities and rest, docket comments and research strongly suggest the need for total off-duty periods from 10 to 16 hours. Studies in aviation (Gander, et al. (1991)), rail (Thomas, et al. (1997), Moore-Ede et al. (1996)), and maritime environments (U.S. Coast Guard Report No. CG–D–06–97, U.S. Coast Guard (1997)(MCS 68/INF.11)) illustrate the same point. Studies of truck drivers, including Lin et al. (1993) and McCartt, et al. (1995), point specifically to increased crash risk and recollections of increased drowsiness or sleepiness after fewer than nine hours off-duty.

Studies performed in laboratory settings, as well as studies assessing operational situations, explore the relationships between the sleep obtained and subsequent performance (Dinges, D.F. & Kribbs, N.B. (1991); Bonnet, M.H. & Arand, D.L. (1995); Belenky, G. et al. (1994); Dinges, D.F. et al. (1997); Pilcher, J.J., & Hufcutt, A.I. (1996); Belenky, G. et al. (1987). The results of the studies can be summarized simply: a person who is sleepy is prone to perform more poorly on tasks requiring vigilance and decisionmaking than a person who is alert.

The time when sleep is taken is important as well because sleep fragmentation can be a byproduct of the timing or the quality of the sleep environment (Bonnet, M.H. (1994); Roehrs, T., Zorick, F., & Roth, T. (1994); Mitler, M.M. et al. (1997); Wylie, D. (1998)).

It is virtually impossible to get an adequate amount of sleep when time for commuting, meals, personal errands, and family/social life is subtracted from an 8-hour off duty period, as the ICC found in 1937. Wylie et al. (1996), for example, showed that drivers in the study obtained nearly 2 hours less sleep per principal sleep period than their stated ''ideal'' (5.2 hours versus 7.2 hours). However, many of them did not manage their off-duty time efficiently or effectively to obtain sufficient sleep. All commuting, meals, personal hygiene, social interaction within the study setting, the study protocol itself, and sleep had to fit into their off-duty periods. The U.S. and Canadian drivers participating in that study operated under schedules set up to allow driving up to the maximum time periods permitted under U.S. or Canadian regulations. The drivers returned to regular work-reporting locations at the end of a shift. The elapsed time between beginning and ending a shift included many ancillary duties and other activities in addition to driving so that time available for sleep was generally limited to 8 hours. Participants who drove a regular 10-hour daytime schedule every day spent 5.8 hours in bed and 5.4 hours asleep. Study drivers who ran a regular 13-hour schedule starting in the daytime spent 5.5 hours in bed and 5.1 hours asleep. This was about 2 hours less than the drivers would have preferred to sleep. The time-in-bed similarities between the 13-hour and 10-hour daytime drivers was likely due primarily to their proximity to the sleep center—the 13-hour drivers had to commute less than 10 minutes from their home terminal to the sleep laboratory and 10-hour drivers had to commute between 20 to 30 minutes. (All times cited are for the principal sleep periods, and do not include the naps that some drivers took during their work shifts.) Also, the drivers in both of these daytime-driving groups were able to obtain their principal sleep during optimal times of the day, starting in late evening and ending in the early morning.

Other studies have found that the amount of sleep obtained by CMV drivers is variable and often short. Arnold, P. et al. (1996), interviewed over 700 CMV drivers in the state of Western Australia, which has no formal HOS regulations. Of the drivers interviewed, about 5 percent reported having no sleep on one day during the prior week, 12.5 percent reported

obtaining less than 4 hours of sleep one or more work days in the prior week, and about 30 percent reported obtaining less than 6 hours of sleep on at least one work day. Prior to commencing their current trips, about two-thirds of drivers had between 6 and 10 hours of sleep, but about 20 percent had less than 6 hours of sleep (pp. 27–28). VanOuwerkerk, F. (1988) in a study based on interviews with 650 international European Economic Community (EEC) drivers, noted that drivers reported a median sleep time of 6.7 hours and a median rest period of 7 hours. They reported that the ''minimum rest time [reduction from 11 hours to eight hours not more than two times per week, as permitted under the current EEC Council Directive] has become the rule'' as far as both drivers and enforcement officials were concerned.

In their survey of 511 medium-and long-distance truck drivers in the United States, Abrams, C., Shultz, T., & Wylie, C.D. (1997), found no statistically significant differences in the stated rest needs among the categories of drivers (owner-operator, company driver, regular route, irregular route, solo, team): on an average day, a driver reported needing an average of 7 hours of sleep. There was a slight difference between union and non-union drivers; the former reported needing about 31 minutes less sleep. Just over 90 percent of the drivers reported that they usually used a sleeper berth while on the road. Almost three-fourths of the drivers reported taking their sleep in a single period, spending eight to nine hours in the berth. Just over two-thirds of the drivers who split their sleeper berth period reported usually spending 4 to 5 hours in the berth during one period.

The time of day when sleep is taken can affect how long the sleep period lasts. Grandjean, E. (1982), cited several surveys of European shiftworkers. ''It appeared that daytime sleep was distinctly shorter than night sleep the workers took on their rest day. The average length of sleep in the daytime was six hours, whereas on the rest day the average varied between six and twelve hours, with longer sleep on the second of the two rest days than on the first'' (pp. 248–249). Grandjean cites Lille's term ''sleep debt'' to describe the longer sleep periods the nightshift workers took on their two between-shift rest days and noted that a single night's sleep was apparently insufficient to ''pay it back.''

Other modal administrations within the U.S. DOT have also found similar findings with respect to their regulated industries. An aviation study documented how commercial flight crews organize their sleep during layovers on long-haul (trans-oceanic) trips involving the crossing of multiple time zones. Duty periods on the trips that were studied in Gander et al. (1991) averaged 10.3 hours. The duty periods alternated with layovers averaging 24.8 hours, and the crew members typically took their sleep in two periods. The authors noted that the sleep/wake patterns were complex, with an average pattern of sleep and wakefulness of 19 hours awake/5.7 hours asleep/7.4 hours awake/5.8 hours asleep. The flight crews also reported naps on the flightdeck and during their off-duty periods. The authors stated: ''This study clearly documents that, in scheduled commercial long-haul operations, there are physiologically and environmentally determined preferred sleep times within a layover. The actual time available for sleep is thus less than the scheduled rest period.'' (p. 1)

A railroad study compared two schedules, one involving fast-backward rotations, the other, slow-backward rotations. The Thomas et al. (1997) study participants received a crew call two hours prior to going on-duty, as railroad crews do generally in their normal operational workdays. Under the fast-rotating schedule, the engineers' sleep duration averaged 4.6 hours during a 9.3-consecutive-hour off-duty period. Under the slow-rotating schedule, the average sleep duration was 6.1 hours during a 12-consecutive-hour off-duty period. (The minimum off-duty time required was 8 consecutive hours if the engineer had less than 12 hours on duty.)

Locomotive engineers participating in a survey (Moore-Ede et al. (1996)) were asked several questions concerning sleep needs and sleep obtained. The following information is drawn from Questions 67 through 70 of the Stage II Volunteer Survey, Overall Totals. To ''feel alert and well rested,'' 10.8 percent stated they needed 5 or fewer hours; 35.1 percent, 6 hours of sleep; 29.7 percent, 7 hours; and 24.3 percent, 8 or more hours. On average, the engineers said their actual sleep taken on days they worked averaged: fewer than 5 hours, 21.6 percent; 5 hours, 16.2 percent; 6 hours, 21.6 percent; 7 hours, 29.7 percent; and 8 or more hours, 10.8 percent. On days off, the engineers stated they received: 7 hours, 37.8 percent; 8 or more hours, 43.2 percent; all other amounts 6 hours or less, 18.9 percent. During vacations, sleep times averaged: 35.1 percent, 7 hours; 51.4 percent, 8 or more hours; all other amounts 6 hours of less, 13.5 percent.

A study was conducted to quantify the nature and extent of fatigue in mariners in the U.S. Coast Guard's ''Fatigue and Alertness in Merchant Marine Personnel: A Field Study of Work and Sleep Patterns,'' Report No. CG–D–06–97. Data in the form of work and sleep logs were collected for periods from 10 to 30 days from 141 mariners on eight different ships involved in U.S. Pacific intercoastal trade. Among the findings: average sleep duration at home was 7.9 hours while average sleep duration at sea was 6.8 hours; watchstanders slept less and rated their sleep to be of lower quality compared to command personnel or day-workers; and the work days of watchstanders are longer than for command and day-work personnel. The researchers also analyzed what they termed ''critical fatigue indicators'': the proportion of 24-hour periods during which total sleep was less than four hours, the proportion of alertness self-assessments of 3 or fewer recorded in the sleep log, and the proportion of sleep latencies (time between going to bed and falling asleep) of five minutes or less as recorded in the sleep log. Watchstanders fared worse than command or daywork personnel, and watchstanders on the 4–8 watch had a considerably higher incidence of sleep durations under 4 hours in a 24-hour period. The report concluded: ''The data clearly portray that risk factors for fatigue are present in maritime work schedules. The solution to this problem involves providing the opportunity for a longer continuous rest period, and motivating mariners to take advantage of that rest period for a single, uninterrupted sleep. A review of shipboard operational practices may identify various means to provide longer continuous rest periods and other approaches to fatigue reduction.'' (p. 6)

Weekly sleep. For weekly off-duty periods, the research indicates that to negate the effect of accumulated week-long sleep deprivation and restore alertness to the human body it is necessary to have at least two consecutive nights off-duty that include the periods from midnight to 6:00 a.m. For long-haul CMV drivers, this ''weekend'' (i.e., a period to permit recovery from cumulative fatigue, not necessarily falling on a Saturday and Sunday) should be up to 56 hours long, but could be reduced to 32 hours as long as that period included two nights covering two periods from midnight to 6:00 a.m. The research suggests that drivers may need even more nights off duty if they have a severe sleep deficit.

This may be a good example where the science would not change, but

where the same provisions cannot be provided in another transportation mode without creating another safety problem. It may not be possible, for instance, to have an ocean ship in a port for each ''weekend'' recovery period, and everyone could not be provided two consecutive nights off each week while the ship is away from port. CMV traffic is much more flexible.

In his 1987 study of European heavy-goods-vehicle drivers, Hamelin suggests that the risk of an accident might be more dependent on cumulative fatigue than on the short periods of work time prior to a crash noted on the accident reports (the forms required an entry of time since the last stop, rather than the time since the beginning of a trip). Hamelin computed accident risk rates according to the time of day, the time on task, and whether the drivers were in the ''Transport'' or ''Other'' occupational categories. For all drivers, the risk rate was nearly double (1.82 times baseline) after 11 hours of work. Hamelin found for the category labeled ''Other'' drivers, who had worked over 11 hours, it was over four times as high during the period 8:00 p.m. and 7:00 a.m.

In a study of driving patterns used by a U.S. less-than-truckload motor carrier, Jovanis, P. et al. (1991) also noted increased crash risk associated with long driving times over two or more days of a week. The Society of Automotive Engineers, Inc.'s ''Truck and Bus Industry Glossary,'' February 1988, No. SP–88/732, defines ''less-than-truckload (LTL)'' as ''a quantity of freight less than that required for the application of a truckload [TL] rate.'' Jovanis and his co-authors noted, ''The two patterns with the highest risk of an accident were those that contained heavy driving during the prior three days and consisted of driving from 3:00 p.m. to 3:00 a.m. (Pattern 1) and from 10:00 p.m. to 10:00 a.m. (Pattern 8). The lowest risk was associated with driving from 8:00 p.m. to 6:00 a.m. but with limited driving on the prior three days.'' (p. 27)

Wylie et al. (1996) found that although some of the performance data did not show a clear-cut relationship to driving time (time on task), drivers' self-ratings *did* correlate significantly with time since the start of the trip and with the cumulative number of trips. ''Thus, the self-ratings were not very good indicators of drowsiness, but they may have been indicative of increasing stress or compensatory effort that signaled fatigue or loss of alertness.'' (p. 5–11).

Smiley, A. & Heslegrave, R. (1997) cited several scientific studies dealing with recovery time as a portion of their review of scientific literature on rest and recovery requirements. The context of the review was an assessment of the potential adequacy of a 36-hour cumulative-fatigue-recovery provision that had been proposed by motor carrier industry groups to Transport Canada. Smiley and Heslegrave cited a 1967 study by Lille suggesting that a single day off was insufficient for night workers to recover after a sleep debt accumulated over five days. Other studies they cited indicated a preference, in terms of recovery, for a three-day rest period compared to a two-day period after three 12-hour night shifts. One example was a study (Hildebrandt et al. (1974)) that illustrated this advantage of two days and three days off, compared to one day off, in operator performance (locomotive engineers' missed multiple in-cab warning signals that resulted in automatic braking being triggered) and a 1994 literature review indicating that two nights of recovery sleep are usually sufficient to allow near full recovery after extended periods of sleep loss. Smiley and Heslegrave concluded that, ''nevertheless, although the available research is sparse, it is sufficient to raise concerns about a 36 hour reset that would allow drivers to accumulate up to 92 hours on-duty within a seven-day period, particularly for night driving.'' (p. 14)

O'Neill, T. et al. (1999) studied drivers on long (14-hour) daytime duty schedules in a driving simulator. The drivers did not appear to have accumulated significant sleep loss during the study but their amount of measured sleep increased and their sleep latency decreased on their first off-duty days. The research conditions tested found ''the effectiveness of a full two nights and one day off (that is, 'Friday night' to 'Sunday morning' as a minimum safe restart period—about 32 hours off duty) under the conditions tested.'' (p. 48)

Griffin, G., et al. (1992) assessed potential outcomes of the FHWA's August 19, 1992 (57 FR 37504) NPRM, concerning HOS for CMV drivers, termed the ''24-hour restart'' provision. As discussed above in today's NPRM, the FHWA withdrew the proposal on February 3, 1993. The authors noted, ''The implications for safety are the most difficult to determine . . . a search for secondary accident data that would be useful in addressing the implications that the 24-hour rule would have on safety was made at the state and federal level. No data was identified that would be statistically valid . . .'' (p. 37)

Rosekind, M.R. (1997) in a major aviation conference presentation, advised listeners to consider cumulative fatigue effects. ''It is important to maintain an optimal sleep opportunity every 24 hours and also address the potential for cumulative effects. Therefore, appropriate recovery time should be allowed per week (days or rolling hours). Scientific studies show that two nights of recovery sleep are typically needed to resume baseline levels of sleep structure and waking performance and alertness.'' (p. 7.6). Second, the driver should be afforded more opportunity for daily and weekly sleep.

3. Driving in Any Duty Shift Should Generally Not Exceed 12 Hours

The research suggests that performance degrades and crash risk increases markedly after the 12th hour of any duty time during a work shift (Hamelin (1987); Brown (1994); Campbell (1988); Rosa and Bonnet (1993); Rosa (1991); Rosa et al. (1989); Harris and Mackie (1972); Mackie and Miller (1978); U.S. Army (1983); Transportation Research and Marketing (1985)). The studies by Campbell, Brown, and Transportation Research and Marketing focused on CMV crash cases; the other studies were performed in actual workplaces (industrial plants, in the case of Rosa's studies) and over-the-road CMV operations (U.S. Army and Mackie and Miller). Some recent research has suggested that naps can improve performance later in work cycles. The use of naps was not a factor explored in these earlier studies. This research finding, however, might not apply very well to other transportation modes, where duty needs may encompass more than is contemplated in the duty of driving CMVs. Such other duty needs and considerations might include: the restricted environment of airplanes, locomotives, and ships; the length of trips away from airports, harbors, and depots; and on-board airplane, locomotive, and vessel needs and emergencies.

4. The Time of Day When Driving Is Performed Should Be Considered

Research suggests that there is a higher risk of fatigue-induced single-vehicle accidents at night, especially between midnight and 6:00 a.m. For example, the following eight studies are representative of the research. Hamelin (1987) computed accident risk rates among drivers of heavy-goods vehicles according to the time of day, the time on task, and whether the drivers were in the ''Transport'' or ''Other'' occupational categories. For ''Transport'' and ''Other'' categories combined, the accident risk rate was

nearly double (1.82 times the baseline) after 11 hours of work. However, for the category ''Other Branch'' drivers who had worked over 11 hours, it was over four times as high during the period 8:00 p.m. and 7:00 a.m.

Blower & Campbell (1998) reported that about 20 percent of all fatal crashes and fatalities and 10 percent of all injuries involving a long-haul truck (tractor pulling at least one trailer) occur between midnight and 6:00 a.m. Crashes at night tend to be more severe, with about 435 injuries per thousand crashes between midnight and 6:00 a.m., compared with 320 injuries per thousand for the remainder of the day. There are about three times as many fatalities per thousand crashes from midnight to 6:00 a.m. Using exposure data classifying night as 9:00 p.m. to 6:00 a.m., truck travel during that period is associated with a relative risk about twice that of the rest of the day.

Kecklund and Akerstedt (1995) examined data for all accidents involving an injury and all truck accidents on Swedish motorways for the period 1987–1991. Risk ratios were computed against a baseline time period of 8:00 a.m. to 4:00 p.m. Single-vehicle accidents where alcohol was not a factor peaked at 4:00 a.m. at 13 times the baseline level. The risk of a fatal accident was 35 times the baseline level at 4:00 a.m.; severe (27 times) and minor (19 times) injury accidents also peaked at that time. Risk ratios for overtaking-vehicle and oncoming-vehicle accidents also peaked at 4:00 a.m., but the ratios were considerably lower (3–4 times). For trucks, single-vehicle accidents between 3:00 a.m. and 5:00 a.m. peaked at 3.8 times the baseline risk.

Hildebrandt, G., et al. (1974) examined one month's records of approximately 15,000 locomotive engineers employed by the German Federal Railways. They reviewed records covering 2,238 automatic braking incidents and nearly 20,000 second-level warning signals. The authors studied the relative frequency of second-level warning signals and of the occurrence of automatic braking by time of day and by length of shift and found peaks of about 125 percent of the daily average automatic braking incidents taking place around 3:00 a.m. and 1:00 p.m.–2:00 p.m. They found peaks in the activation of the acoustic signal at around 3:00 a.m. and 3:00 p.m. The authors concluded there exists a 12-hour period of variation in vigilance, superimposed upon the 24-hour circadian period.

Jovanis, P., et al. (1991) studied several driving schedule patterns in a less-than-truckload motor carrier's ''pony express'' operation. In this type of operation, drivers make an outbound trip from the home terminal to another terminal, drop their trailer, pick up another trailer, and return to the home terminal at the end of a work shift. Cumulative driving hours ranged from 7.8 to 8.4 daily, while the drivers' daily cycle of on duty and off duty ranged from 22.3 to 23 hours, indicating some circadian disruption. The highest daily risk was found to occur from 4:00 a.m. to 6:00 a.m. Elevated risk was found from midnight to 8:00 a.m. According to the authors, ''The two patterns with the highest risk of an accident were those that contained heavy driving during the prior three days and consisted of driving from 3:00 p.m. to 3:00 a.m. (Pattern 1) and from 10:00 p.m. to 10:00 a.m. (Pattern 8). The lowest risk was associated with driving from 8:00 p.m. to 6:00 a.m. but with limited driving on the prior three days.'' (p. 27)

Dinges, D.F. et al. (1997) studied young male adults under conditions of partial sleep deprivation (average of 5 hours of sleep obtained per night). They reported that the only statistically reliable subjective measure of time-of-day effects (out of several measurements used) was the Stanford Sleepiness Scale. However, four of the five objective performance measures showed statistically significant variations by time of day (tests were administered at 10:00 a.m., 4:00 p.m., and 10:00 p.m.). One measure of vigilance and reaction time (psychomotor vigilance task) also showed significant variation across the days of sleep restriction. Dinges and his coauthors reported the effects of sleep restriction on performance measures appeared to level off between the second and fifth day of sleep restriction; for subjective assessments, between the second and sixth day. The authors believed the subjects were undergoing an ''adaptation'' to sleep restriction following an initial shift to higher daytime sleepiness levels, and that this change may have resulted from changes to sleep itself during those periods (although EEG was not monitored). However, by the sixth to seventh day performance was deteriorating and subjective sleepiness was increasing again. The authors noted the linear nature of the trends indicated the performance changes are cumulative, and they did not level off.

Wylie, et al. (1996), in their operational study of CMV drivers on fixed routes under one of four types of schedules, noted that the strongest and most consistent factor influencing driver fatigue and alertness was the time of day. Compared to driving at other times, night driving (midnight to 6:00 a.m.) was associated with more video observations of driver drowsiness, poorer lane-tracking, and worse results on tests of mental performance.

Lin, et al. (1993), studying schedules of less-than-truckload CMV drivers, assessed consecutive driving time, multi-day driving patterns over a seven-day period that included time of day of driving and days driving within that period, driver age, driving experience, and hours off-duty prior to the trip. Out of ten driving patterns, they found the driving pattern with the lowest risk was ''Pattern 2,'' a highly regular schedule with on-duty times generally spanning the period 6:00 a.m. to about 2:00 p.m. and off-duty times generally spanning the period 6:00 p.m. to 4:00 a.m. Risk in six other schedule patterns that included night and very early morning driving, morning and evening rush-hour driving, and very infrequent scheduled driving had computed crash risk about 1.5 times as high (p. 5). When off-duty hours were assessed, the risk following off-duty periods less than or equal to 9 hours was 1.4 times higher.

When driving time was the category of interest, Lin et al. (1993) found there were no statistically significant differences among the first four hours but the ratio increased from that time until the last driving hour. Lin and his collaborators noted a limitation in their analysis, and provide a caveat to the estimates of the odds ratios in the last driving hour category: a large number of non-crash trips are completed during the 8th or 9th hour of driving, but the authors' ''assumed failure time,'' defined as the expected time of involvement in an accident, would occur after this trip completion time. (p. 5)

A limit, however, on the driving of CMVs between midnight and 6:00 a.m. would not necessarily result in a reduction in CMV-involved crashes. The benefit-cost analysis prepared for this NPRM and filed in the docket, as well as the section with the subheading ''Benefits and Costs'' later in this NPRM, discuss the issues, and additional research findings related to the benefit-cost, of a night-restriction option that the agency analyzed in more detail.

The proposed HOS regulations will address in three ways this issue of higher crash risks associated with night driving. First, the amount of consecutive hours off-duty proposed is longer than the current regulatory minimum. The objective is to allow drivers to have the opportunity to sleep longer during their off-duty periods. Second, the regulatory proposal would return to the pre-1962 24-hour clock. The circadian disruption permitted under the current regulations

(if drivers or motor carriers scheduled duty cycles to touch the edges of the current regulatory envelope of 10 hours of driving and 8 hours off-duty), which also adversely affects sleep quality and quantity, would be mitigated. Third, the regulations would require drivers to be given a consecutive off-duty period spanning at least two periods between midnight and 6:00 a.m. in every seven consecutive days to obtain restorative sleep. This has two benefits: it provides the opportunity for sleep during circadian-optimal times and it prevents drivers from being required to work more than five consecutive night shifts.

5. Non-Compliance by Drivers and Motor Carriers Increases the Potential for Adverse Safety Outcomes

While drivers who drive to the maximum number of hours allowed and rest to the minimum number of hours required by the HOS rules may be fatigued, the situation of drivers who are not in compliance is undeniably worse. Whatever the limitations of, for example, 5 to 6 hours of interrupted sleep, it is clearly more restorative than little or no sleep as reviewed in the discussion of the studies for daily sleep under VII.A.2. above. Unfortunately, many drivers violate the HOS regulations. Braver et al. (1992) interviewed over 1,200 drivers at truck stops, truck inspections stations, and agricultural inspection stations in the early 1990s. Based on the drivers' responses, the authors classified 73 percent of the drivers as hours-of-service violators. A 1995 survey of over-the-road drivers in New York State, McCartt et al. (1997), found that over one-third reported driving more than 60 hours in a typical week, and a similar percent reported working 70 hours in a typical week.

A more recent survey, Belzer et al. (1999), performed by the University of Michigan's Trucking Industry Program (UMTIP) corroborated this high violation rate. Belzer and his collaborators surveyed over 800 mostly over-the-road drivers at a number of truck stops in the Midwest in 1997. Only 16 percent of drivers surveyed reported that log books were generally accurate, and 56 percent stated that they had worked more hours than recorded in their records of duty status (RODS) in the last 30 days. Over-the-road drivers and owner-operators were most likely to report working more hours than recorded in the RODS, whereas local drivers were least likely. The average number of hours worked was over 63 in the previous 7 days. Twenty-five percent of drivers reported working at least 75 hours in the last 7 days, and 10 percent reported working more than 90 hours. The UMTIP also reported that the average annual mileage was found to be 112,765, where local drivers at the 10th percentile reported driving 25,000 miles annually and long-haul drivers at the 90th percentile reported driving 170,000 miles annually.

Assuming drivers have two weeks of annual vacation, that leaves 351 days per year potentially available for driving. Since the current rules prohibit drivers from driving after being on duty more than 70 hours in eight consecutive days, drivers have 3,071.25 on-duty hours during which they could possibly drive [351 days divided by 8 days = 43.875 periods per year × 70 on-duty hours for driving per period]. If one assumes that a driver was able to average 50 mph for every on-duty hour all year long, he or she could drive a maximum of 153,562 miles per year [3071.25 hours × 50 mph]. A 50 mph average for an entire year is highly unrealistic, yet the Belzer survey showed that the 90th percentile of long-haul drivers surveyed covered 170,000 miles per year. The only reasonable conclusions are that these drivers grossly violated the hours-of-service limits, significantly overestimated their annual mileage, or spent part or all of the year in team operations and counted the distances they traveled during on-duty not driving and sleeper-berth periods.

Drivers who comply with the HOS regulations may not be adequately rested, and the significant percentage who do not comply are probably not rested.

B. FMCSA Principles for Regulatory Improvement

The FMCSA determined that, based on the motor carrier and highway research and operational characteristics of the industry, it had to design regulations that incorporated the following requirements.

- Increase the 18-hour on-duty/off-duty work cycle to a normal 24-hour work cycle.
- Increase time off to allow sufficient time for 7 to 8 hours of sleep.
- Require mandatory ''weekend'' recovery periods of at least two nights of recovery sleep to resume baseline levels of sleep structure and waking performance and alertness.
- Address the effects of operations between midnight and 6:00 a.m. by requiring off-duty periods that enable restorative sleep by including two consecutive periods between these hours.
- Allow ''weekends'' of sufficient length to ensure safety and provide adequate protection for driver health and safety.
- Increase operational flexibility by offering a menu of HOS options customized to different major or distinct operational segments while still maintaining an appropriate level of safety.

The FMCSA believes these requirements will significantly reduce fatigue problems related to sleep deprivation, if drivers and motor carriers adhere to them. The FMCSA recognizes, however, that these rule changes do not eliminate the potential problem the ICC described in 1937, namely:

> We have no control over the manner in which a driver may spend his time off duty, although some of his spare time activities may tire him as much as any work would do. We can only emphasize, by this comment, the responsibility which is the driver's own to assure himself of adequate rest and sleep, in the time available for this purpose, to insure safety of his driving, and likewise the employer's responsibility to see that his drivers report for work in fit condition. 3 M.C.C. 665, at 689.

Drivers must still manage their off-duty time if these, or indeed any, proposals are to be effective. Some drivers may continue to push themselves to drive more hours than this proposal allows in order to earn more money. Others may perform non-driving jobs during their off-duty time; have long commutes to and from home; or engage in other pursuits that interfere with their obligation to obtain the proper sleep and be prepared to operate safely. Under this proposal, all time spent in any work must be counted as on-duty time, since all work can either induce fatigue or deprive the driver of sleep.

C. Types of Motor Carrier Operations

The motor carrier industry is diverse. A motor carrier is any person who uses a commercial motor vehicle, regardless of ownership, to transport passengers, property, or the vehicle itself for any purpose. Motor freight and passenger transportation differ in many respects from other modes of transportation. Other modes may have different means of tracking hours of service of their critical employees because of the operating characteristics and more structured environment. Many motor carriers are statutorily exempt from FMCSA jurisdiction (e.g., most of those in intrastate commerce) or exempted by regulation (e.g., Federal, State, or local government vehicles (§ 390.3(f)).

The FMCSA grouped motor carriers subject to its jurisdiction into the following 5 types whose substantial

operational differences might warrant more individualized consideration than the current HOS rules allow:

Type 1—Long haul. These drivers are away from their normal work reporting location and home for more than three days at a time; in total, they are away from home for a large part of the year. Their primary task is driving, although they may well engage in other activities, particularly loading and unloading cargo (or helping passengers and moving baggage, if the driver operates a motor coach). Type 1 drivers may have regular or irregular wake-sleep cycles, depending upon the requirements placed upon them by their employers, their clients (if they are independent owner-operators), their personal preferences, or a combination of all three. Many of these drivers use sleeper berths, but some sleep in hotels, motels, company sleeping quarters, truck stops, or other accommodations. Type 1 drivers have the highest accident exposure (based on distance traveled) of all driver categories, usually over 161,000 kilometers (km) (100,000 miles) per year (the benefit cost analysis uses 114,000 miles); team drivers may have twice that amount. They also have the least regular wake and sleep cycles, which often includes daytime off-duty periods when they must obtain sleep. These drivers are the least likely to be subject to frequent direct monitoring by their employing motor carriers, that ultimately are responsible for managing the driver's work/rest schedules.

Type 2—Regional. These operations are similar to Type 1, except that drivers are away from their home base only three or fewer days at a time. For example, a Type 2 driver might report for work at 7:00 a.m. Monday after a weekend off duty, leave on a trip requiring two overnights on the road, and return to his normal work reporting location by 9:00 p.m. Wednesday. Drivers for some large less-than-truckload carriers return to their normal work reporting location after only one night on the road. Type 2 drivers are generally able to take a larger proportion of their sleep periods in a familiar home environment. A Type 2 driver has a moderately high annual mileage-based accident exposure (from 120,000 to 161,000 km, or 75,000 to 100,000 miles) (the benefit cost analysis uses an interpolated estimate of 82,000 miles since the research the agency used did not directly address this group of drivers). These drivers, although often remote from a home base of operation, are more likely than Type 1 drivers to operate in more regularized schedules and to be subject to more frequent monitoring by their motor carriers.

Type 3—Local split shift. Split-shift drivers spend most of their on-duty time driving, but most are local (or home-based), and their driving shifts are generally separated by several hours. A Type 3 driver might work in a commuter or tour motor coach operation, requiring on-duty periods, for example, from 5:00 a.m. to 9:00 a.m. and 4:00 p.m. to 8:00 p.m. To be considered in this category, the driver must be off-duty during the intervening hours (in the example, from 9:00 a.m. to 4:00 p.m.). The driver may deadhead to another location, be shuttled back to a base of operations, or merely be free to spend the time as he/she chooses at the location where his/her duty terminates. If the driver performs non-driving duties for the motor carrier, holds another job, or performs any other work, time spent in those activities must be counted as on-duty time, and may remove the driver from the Type 3 category. Type 3 drivers are different from Type 4 and 5 drivers because driving is the main part of their job, and because these drivers are not on duty more than 12 hours, although the end of their shift occurs more than 12 consecutive hours after they begin the workday. Type 3 drivers are fairly prevalent in the motor coach industry, but other operations would fall into the same category, e.g., commuter transportation, before-school/after-school-activity bus drivers, split-shift freight, morning and evening edition newspaper delivery operations, and specialized CMV operations. The level of direct motor carrier monitoring of Type 3 drivers work/rest schedules varies depending on the operation involved.

Type 4—Local pickup and delivery. Type 4 drivers work in the vicinity of their normal work reporting location. They are generally on regular schedules extending less than 12 consecutive hours from the time they report in until they check out. Driving is a significant part of their work, more than half of their on-duty hours. Drivers currently operating under the 100 air-mile radius exception in 49 CFR 395.1(e) would generally be considered Type 4 drivers, and would be absorbed into this category, eliminating the need for that exception. Because they operate daily out of a home base, their work tends to be more regularized and the carriers are able to directly monitor drivers' work/rest schedules.

Type 5—Primary work not driving. These drivers also work in the vicinity of their normal work reporting location. Unlike Type 4, however, they typically spend only one-third (or less) of their on-duty hours behind the wheel. This classification covers operators of CMVs whose duties do not center around driving, but who operate these vehicles as a necessary part of their work assignments. Type 5 operations would include many drivers for electrical, water, natural gas, and communications utilities; construction equipment operators; environmental remediation specialists; oilfield service workers; ground water well drilling workers; operators of mobile medical equipment providing community patient services; and driver-salespeople. They are generally subject to close and frequent direct monitoring of their work/rest schedules, and, because they are being grouped into one category for regulatory purposes, there is no need for any special exemptions. Generally, drivers in this category have periods during their work day when they have the opportunity to take breaks while they are awaiting instructions, while they wait for others to perform tasks related to their work. For example, a driver-salesperson delivers snack foods or bread to a grocery store. Before stocking the shelves, the grocery store personnel might have to finish their tasks or clear a space for the salesperson to work.

D. Regulatory Options

The FMCSA applied the research findings and the principles discussed above to the five types of motor carrier operations and developed six potential regulatory options. A seventh option was to retain the current rules. For reasons noted throughout this document, the seventh option was rejected. Nonetheless, the current rules necessarily form the baseline for benefit-cost comparisons with other options.

The FMCSA has found no sleep or fatigue research that supports any of the current exceptions or exemptions, including the 24-hour restart provisions authorized by the NHS Act. The agency determined that a slightly longer break, one that includes two consecutive midnight to 6:00 a.m. periods to obtain restorative sleep and could be as little as a minimum 32 consecutive hours (though this would happen rarely), would better serve safety objectives while meeting the needs of most of those industry segments presently eligible for the 24-hour restart provision. Most of the drivers in those segments operate primarily in the daytime so that a minimum 24-hour break does not return them to their normal starting time. A minimum 32- to 56-hour break that includes the minimum of two consecutive nights of sleep, however, would provide them a full day off with two sleep periods between midnight and 6:00 a.m.

Options Developed

The FMCSA developed policy options using the research available in the docket. See Table 4 for a summary of each option. Policy Option A is the current rule. Policy Option A allows drivers to operate on an 18- to 23-hour cycle. Drivers may work as much as a 15-hour shift, with a maximum of 10 hours of driving. Alternatively, they may drive 10 hours, followed by 8 hours off duty, and then drive for another 10 hours. Thus, drivers are allowed to be on duty and drive for as many as 16 hours in a 24-hour period, with an 8-hour off-duty period after the first 10 hours of driving. This policy option does not require that a driver be given any off-duty time for personal necessities and needed rest, although such breaks are allowed and logged as off-duty time, thus extending the actual elapsed time within which the 10-hour driving and 15-hour duty limitations apply. To exploit the absolute minimums in the rule, and still obtain sufficient sleep, the entire 8-hour off-duty period would have to be devoted to sleep. Essentially the same requirements currently are imposed upon drivers in all five types of operations.

Policy Option B was based on a 24-hour cycle. It required a minimum of 9 consecutive hours off duty for sleep (12 hours for Type 4 drivers), with a recommendation that this 9-hour period begin at the same time each day. In addition, this option provided a minimum of one additional hour in the remainder of the 24-hour period for any activity of the driver's choosing. For Type 2 drivers sleeping at home and for Type 3 drivers, this one-hour minimum was extended to 3 hours. A maximum of 14 hours on-duty time would have been allowed, with the recommendation that it begin at the same time within each 24-hour period, with a maximum of 12 of those hours devoted to driving. However, the maximum on-duty time was 12 hours for Type 2 drivers sleeping at home and for Type 3 and 4 drivers. For Type 5 drivers, the maximum on-duty time would have been extended to 15 hours, only 6 hours of which could have been devoted to driving.

The FMCSA's policy Option C was not greatly different from Policy Option B, except that it increased to two the minimum additional hours off duty allowed for Type 1 and 2 drivers away from home, for personal necessities and rest, as well as other activities of the driver's choosing. Maximum time on one shift was reduced from 14 hours to 13 hours. Like Policy Option B, it allowed up to 12 hours of driving, and 6 hours of driving for Type 5 drivers. Drivers away from home could have accumulated as many as 78 hours on duty in 7 days but not more than 130 hours in 14 days, or an average of 65 hours per week. Drivers who are not away from home could have accumulated no more than 65 hours in 7 days. Like Policy Option B, there would have been no distinction made between daytime and nighttime driving.

Policy Option D was also based on a 24-hour cycle. It would have allowed a minimum of 9 consecutive hours off for sleep (12 hours for Type 4 drivers and 8 hours for Type 5), plus a minimum of 3 hours off for Type 1, 2, and 3 drivers for rest, personal necessities, and other activities. For Type 5 drivers, a minimum of only one hour was required for these other activities. On-duty time was restricted to a maximum of 12 hours, except for Type 5 drivers, where it was 15 hours. Maximum driving time was also 12 hours, except for Type 5 drivers, where it was 6 hours. A maximum of 72 hours of on-duty time could have been accumulated over a 6-day period, and all those hours could have been spent driving. For Type 4 drivers, the maximum was 60 hours within a 7-day period.

Policy Option E retained the 10-hour driving limit in the current system (Policy Option A) but also used a 24-hour base cycle. It would have allowed up to two hours additional on-duty time that could be used for loading and unloading or other work-related activities. In addition, it would have provided reasonable off-duty time in addition to sleep time, so that drivers could pursue other activities required for normal living. As in the other policy options, there was no distinction made between daytime and nighttime driving, nor was there any special consideration of time spent in a sleeper berth.

Policy Option F used a 24-hour base cycle and was identical to Policy Option B though it would have also required a limitation or prohibition on driving between midnight and 6:00 a.m. for all drivers. This option is discussed in more detail in the next section (E. The Expert Panel).

Policy Option G used a 24-hour base cycle and required 16 consecutive hours off duty and would have required driving and other duties to be completed within an eight-consecutive-hour workday. This is the most restrictive option and was viewed by the agency as unsupported either by any cited research data or any of the comments to the ANPRM. The FMCSA did not find any indication in the docket materials leading the agency to believe a duty period as low as 8 hours in a 24-hour period is necessary for highway safety, though it might be desirable for social reasons. Such a policy would have required tens, if not hundreds, of thousands of additional drivers who are not likely to be available, given the present state of the U.S. economy.

The Congress considered, and rejected, an 8-hour workday for the motor carrier industry in 1935. A minority of the House committee considering the Motor Carrier Act of 1935 attempted to legislate an 8-hour workday for bus and truck drivers. See H. Rep. No. 1645, Additional Views, p. 6–7; amendment introduced by the sponsor of the additional views, 79 Cong. Rec. 12212, House, July 31, 1935; and rejected by the Whole House, 79 Cong. Rec. 12230, House, July 31, 1935. The ICC considered the same policy in 1938 and also rejected it. Review the quote from 6 M.C.C. 557, at 561 (July 12, 1938) above under IV. B. Immediate Changes to HOS Rules. The FHWA considered an 8-hour workday in 1980 and 1981. At the time, the FHWA conducted a cost-effectiveness analysis and found such an option had an estimated cost of $11.496 billion and benefits of $450 million. If some drivers use the extra free time to supplement their incomes in other employment, the FMCSA thinks it is logical that they would accumulate additional fatigue that an 8-hour workday is designed to prevent.

The FMCSA assessed preliminarily each of the seven potential HOS options and determined the last two (F and G) would not have significant cost and benefit changes from the 1981 analyses. Based on that assessment, the FMCSA decided that options A through E adequately cover the range of realistic alternatives to the current rules.

TABLE 4.—FMCSA OPTIONS DEVELOPED

Potential Policy...	Wake-Sleep Cycle...	These many hours off duty for sleep in one consecutive period...	With at least these many additional hours off duty...	Allowing the driver to work up to this many hours, including driving, in any combination...	And a weekly recovery period of at least...
A—Status quo	18 to 23 hour cycle.	8	0 hours	15 hours; 10 limited to driving.	NA.
B—Maximum 14 on, Minimum 10 off.	24 hour cycle	9	1 hour driver sleeps away from home, 3 hours when at home.	14 hours, 12 hours limited to driving.	58 hours.
C—Maximum 13 on, Minimum 11 off.	24 hour cycle	9	1 hour driver sleeps away from home, 2 hours when at home.	13 hours, 12 hours limited to driving.	58 hours.
D—Maximum 12 on, Minimum 12 off.	24 hour cycle	9	3 hours	12 hours, no lower limit for driving.	58 hours.
E—Maximum 12 on, minimum 12 off.	24 hour cycle	9	3 hours	12 hours, 10 hours limited to driving.	58 hours.
F—Maximum 14 on, Minimum 10 off.	24 hour cycle	9	1 hour driver sleeps away from home, 3 hours when at home.	14 daily hours, 12 hours daily limited to driving, and only 18 hours of driving between midnight to 6:00 a.m. each workweek.	58 hours.
G—Maximum 8 on, Minimum 16 off.	24 hour cycle	16	0 hours	8 hours	58 hours.

E. The Expert Panel

The FHWA convened an expert panel to examine the potential HOS options developed by the agency and review the current state of knowledge about sleep and fatigue. The panel was composed of eight scientists, engineers, and public policy experts in the fields of traffic safety, human factors, and sleep medicine. They were selected because of their familiarity with the science as it relates to commercial trucking, in particular. The membership might be different if another mode of transportation were involved. The panel members were Gregory Belenky, M.D., of the Walter Reed Army Institute of Research; A. J. McKnight, Ph.D., of the National Public Services Research Institute; Merrill M. Mitler, Ph.D., of the Scripps Institute & Research Foundation; Alison Smiley, Ph.D., of Human Factors North; Louis Tijerina, Ph.D., of the Transportation Research Center, Inc.; Patricia F. Waller, Ph.D., of the UMTRI; Walter W. Wierwille, Ph.D., of the Virginia Polytechnic Institute and State University; and David K. Willis of the American Automobile Association Foundation for Traffic Safety. The panel members work in academia, government, and as private consultants. The FHWA provided the panel with summaries of over 80 (mostly peer-reviewed) research reports compiled by the FHWA. The panel was asked to evaluate the current regulations and various agency-generated proposals in light of the scientific understanding of sleep and alertness. Their findings, reported in *Potential Hours-of-Service Regulations for Commercial Drivers*, Belenky, et al. (1998), include their discussion of the inadequacies of the present regulations. The complete report is in the docket.

The panel's report identifies the following nine critical issues.

- 24-hour cycle.
- Nighttime differential.
- Continuous time off duty daily.
- Split shift drivers.
- On-duty time versus driving time.
- Sleeper berth use.
- Limits on cumulative on-duty time.
- Adequate recovery time.
- Foreknowledge of work schedule.

One major concern of the panel was the absence of a 24-hour cycle in the HOS regulations. Human evolution responded to the natural light cycle, and human biology still exhibits strong cyclical effects. Human metabolism, and thus alertness, shows daily patterns, with 24 hour peaks and troughs. The panel noted a study by Duffy et al. (1996) in support of the role of the light-dark cycle as a circadian synchronizer and the minimal influence of a schedule shift acting alone.

Another concern of the panel was the importance of continuous time off duty. It reported that sleep obtained in discontinuous segments is not as restorative as continuous sleep. The panel also cited studies which demonstrate that longer periods of off-duty time are associated with longer periods of sleep. The current regulations require that drivers have at least 8 continuous hours off-duty before returning to duty. The panel criticized this requirement as inadequate, because it does not allow drivers time to travel to a resting place or to take care of personal business, and because 8 hours off-duty time generally does not translate into 8 hours of sleep. Wylie, C.D. et al. (1996) showed that drivers who are off-duty for 8 hours generally obtain only about 5 hours of sleep. This trend has also been observed in operational studies in the rail and aviation modes.

The panel also asserted that there should be no differentiation between driving time and on-duty not-driving time. They cite several studies which show that performance of tasks declines with increased time on duty, regardless of how on-duty time is spent. The panel believes that all on-duty time should be treated the same, as the effect on driver safety is similar.

Another concern of the panel was the difference between daytime and nighttime driving. Their report noted several problems with nighttime driving. First, as demonstrated by Wylie, C.D. et al. (1996), the strongest and most consistent factor influencing fatigue and alertness is time of day. Night driving was associated with a higher level of observed drowsiness, poorer lane-tracking, and degradation of mental performance. In addition, the panel noted evidence that daytime sleep is not as restorative as nighttime sleep, because fewer hours are spent sleeping and the quality of that sleep is poorer. Drivers generally agree that nighttime sleep is superior to daytime sleep (Abrams et al. (1997)). The result is that

overall alertness and performance are lower in the nighttime than in the day, and accident risk is correspondingly higher. The Expert Panel report cites evidence suggesting that nighttime driving is associated with as much as a fourfold or more increase in fatigue-related crashes. The existing regulations make no distinction between day and nighttime driving.

The panel's report included a presentation of a candidate schedule, ''Policy Option F.'' This policy option included a provision to limit driving between midnight and 6:00 a.m. to 18 hours within a 60-hour workweek, and to require an extended period off duty at the end of the week. The panel itself ''recognized that any specific limit on nighttime driving is, at this time, arbitrary * * * Because nighttime driving is associated with higher crash risk even when other risk factors are taken into consideration, nighttime driving may be considered as a health and safety liability analogous to other hazardous conditions, with limits on exposure an appropriate intervention'' (p. 36). The panel went on to acknowledge that a restriction upon nighttime driving could generate an increase in the number of heavy vehicles in daytime traffic, increasing exposure to other, smaller vehicles.

The FHWA decided not to propose limits on nighttime driving to the panel based on the 1981 regulatory analysis and its preliminary assessment of the regulatory impact of such a policy. Believing the option had to be analyzed further, even though they admitted the 18-hour limitation is arbitrary and a reasonable explanation can be made for it, the panel requested the agency to reconsider. The agency, upon further review, decided to conduct the benefit-cost analysis of this option again as it had done in 1981.

The FMCSA relied upon the Expert Panel report in reviewing the information in the docket a second time and reshaping the options described above into this proposal. As more fully discussed later, the FMCSA is proposing a required ''weekend'' period for all drivers of at least two midnight to 6:00 a.m. periods for obtaining restorative sleep. Smiley, A. & Heslegrave, R. (1997), O'Neill, T. et al. (1999), and Rosekind, M.R. (1997) come to the same conclusion. As Rosekind wrote, ''It is important to maintain an optimal sleep opportunity every 24 hours and also address the potential for cumulative effects. Therefore, appropriate recovery time should be allowed per week (days or rolling hours). Scientific studies show that two nights of recovery sleep are typically needed to resume baseline levels of sleep structure and waking performance and alertness.'' (p. 7.6). This final proposal is also mindful of the strong evidence, and the panel's finding, that the driver should be afforded more opportunity for daily and weekly sleep.

F. Recordkeeping Requirements

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires the FMCSA to eliminate duplication and greatly reduce the information collection burden hours and costs imposed on the motor carrier industry. Driver paper logs have been a perennial source of complaint both among drivers and enforcement officials. The FMCSA analyzed what the agency and its enforcement partners needed to determine whether a driver and motor carrier are complying with any HOS rules and analyzed other record requirements imposed by other Federal agencies.

1. Time Records

The recordkeeping regulations of the DOL's Wage and Hour Division (WHD) (29 CFR part 516) require employers subject to the FLSA to produce and retain information the FMCSA can use to enforce the proposed HOS rules. The WHD recordkeeping regulations are based on the FLSA's record provision, specifically at 29 U.S.C. 211(c):

> (c) Records
>
> Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder.

Sec. 211(c) requires all subject employers, including interstate motor carrier employers, to make and keep wage and time records for their employees, including drivers. The FMCSA has the authority under 49 U.S.C. 31133(a) to prescribe recordkeeping and reporting requirements and to require the production of records for all interstate motor carriers, not only those carriers that employ drivers, but also those carriers that lease, contract, or allow owner-operators and other non-subject employees to drive on the motor carriers' behalf. The agency is proposing to use that authority to require all interstate motor carriers to make available to FMCSA investigators the WHD wage and hour records they are already required to maintain to comply with the minimum wage requirements of 29 U.S.C. 206. The FMCSA is also proposing to use that authority to require those interstate motor carriers not covered by the FLSA that lease, contract, or allow owner-operator drivers and other non-FLSA subject drivers who operate on those motor carriers' behalf to produce records similar to the 29 CFR 516 records.

Most of the information the FMCSA needs to enforce the proposed rules is currently in 29 CFR 516.2 *Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act* of the WHD regulations. This includes the following six pieces of information from paragraph (a)(1), (5), and (7), including: (1) The driver's *name in full* as used for Social Security recordkeeping purposes; (2) the *identifying symbol or number if such is used in place of name on any time, work, or payroll records*; (3) the *time of day and day of week on which the employee's workweek begins*; (4) *If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice*; (5) the *hours worked each workday*; and (6) the *total hours worked each workweek*.

Most motor carriers engaged in interstate commerce are exempt only from the overtime requirements of the FLSA. Those carriers, however, are addressed by 29 CFR 516.12 *Employees exempt from overtime pay requirements pursuant to section 13(b)(1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act.* This section requires employers to maintain certain records with respect to each employee exempt from the overtime pay requirements of the FLSA by maintaining and preserving payroll and other records, containing all the information and data required by § 516.2(a) except paragraphs (a)(6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

The FLSA exemption from the overtime pay requirement applies only to certain employees of interstate motor carrier employers subject to the MCA of 1935, but not to those subject only to the MCSA of 1984. The only substantial group of interstate carrier employers subject to the 1984 Act that are not also

subject to the MCA of 1935 are private motor carriers of passengers (e.g., churches, musicians, civil and charitable organizations, scouts, companies transporting their own employees, etc.). See 29 CFR 782.2(b)(1). Motor carrier employers employing drivers engaged in intrastate commerce, as defined by 49 U.S.C. 31132, and engaged in interstate commerce, as defined by the FLSA (29 U.S.C. 201 *et seq.*), are required to pay their drivers time-and-a-half overtime for any work in excess of 40 hours per workweek.

The WHD requires subject employers to record and maintain the hours worked by subject employees. The WHD regulations do not specifically state that subject employees (including drivers) must record their own start and end time. In discussions with the DOL, the FMCSA found the WHD allows employers to require the subject employees doing the work to keep their own time or work record instead of hiring separate timekeepers. In any event, all subject employers are responsible under WHD regulations to accurately record the start and end times and total hours worked, for subject employees.

One piece of information, however, is not covered by WHD regulations; that is the location where duty status changes from off duty to on duty and vice versa. The location of duty status changes is important only for those drivers who do not return to their normal work reporting location at the end of each work shift to determine where duty is occurring and is necessary for enforcement of the rule.

Thus, the WHD definitions of on-duty and off-duty time, and the WHD recordkeeping regulations, with the addition of the location of duty status changes for drivers away from their normal work reporting location for two or more workdays, would enable the FMCSA and its State partners to monitor and enforce the proposed HOS regulations for drivers in Types 1 through 5 operations. There would be no need for paper logs in the formats used over the past 60 years. This would allow motor carriers with drivers in Type 3, 4, and 5 operations to use any record of duty the carrier chooses to meet the program objectives and the requirements of both agencies. For Type 1 and 2 drivers, the FMCSA would need to require drivers to add locations of their duty status changes to a WHD-required time record or an EOBR.

The FMCSA is proposing to produce a savings of information collection burdens of approximately 18,000 man-years annually on the industry by dropping the record of duty status (driver log) that has been required since 1937. To enforce the new HOS regulations, the agency would rely on EOBRs for Types 1 and 2 drivers and the employee time records required by the WHD for Type 3 through 5 drivers. See 29 CFR part 516 *Records to Be Kept by Employers* and part 785 *Hours Worked.* This should end the duplication that now exists between FMCSA and DOL regulations.

The agency is also proposing to use 49 U.S.C. 31133(a) to require all motor carriers to prepare time records similar to those required by the WHD for their drivers who are not subject employees covered under the FLSA, generally owner-operators and independent contractors used primarily in Type 1 and 2 operations. The WHD has advised the FMCSA that drivers who are employed by owner-operators and independent contractors who are leased to motor carriers may be subject to the FLSA under the individual coverage provisions of the FLSA, if they are not subject under the enterprise coverage provisions. Owner-operators and independent contractors employing drivers and leasing them to a motor carrier should check if they are subject to the FLSA. The FMCSA is proposing to require the use of EOBRs to record hours for all Type 1 and 2 operations.

2. Electronic On-Board Recording Devices (EOBR)

The FHWA received a petition dated August 3, 1995, to require EOBRs on all CMVs from the IIHS, AHAS, PATT, Families Against Speeding Trucks, National Association of Governors' Highway Safety Representatives, and Public Citizen. These groups believe a mandate to use EOBRs would result in improved HOS compliance, less fatigued drivers, and fewer highway crashes. The NTSB also recommended the FHWA mandate EOBRs.

As discussed below under the benefits and costs of the revised options, the agency has analyzed the benefits and costs of two options to require EOBR use. Overall benefits outweigh overall costs. The FMCSA has therefore decided to propose that motor carriers having drivers in Type 1 and 2 operations be required to use EOBRs. This should ensure credible verification of drivers' adherence to, and improve motor carriers' ability to manage driver compliance with, these proposed rules. It would also enable safety investigators and enforcement officials to better verify the driver's compliance with the new requirements.

The EOBR proposal presented today requires relatively simple technologies and single-purpose devices to satisfy the HOS reporting and recordkeeping requirements. The more complex satellite-based systems and other high-tech communications technologies already used in certain segments of the passenger carrying and trucking industries can probably be adapted or reprogrammed to incorporate HOS functions. The agency is seeking information about the feasibility and cost of such upgrades to existing on-board or satellite-linked data systems. The EOBR requirement is being proposed only to enable FMCSA enforcement officials and their MCSAP-funded State colleagues to review and verify drivers' hours of service and hours of rest. The FMCSA recognizes that drivers may consider this proposal an invasion of their privacy. This is not our intention. We view the EOBR requirement as a more effective form of the self-monitoring and -reporting drivers have been required to perform for many decades in the form of paper records of duty status (logbooks). The EOBR requirement does not include, and should not be interpreted as authorizing, the use of audio or video recording of drivers' activities in, on, or near the vehicle.

The FMCSA solicits comments on the commercial availability and cost of single-function EOBRs designed solely to record HOS. The more complex satellite-based and other high-tech communication devices widely used in the passenger-carrying and trucking segments of the motor carrier industry can probably be adapted to HOS functions. The agency is seeking information about the feasibility and cost of such improvements to existing on-board or up-linked data systems.

The FMCSA solicits comments on, and if possible copies of, engineering and cost analyses of currently available EOBRs that meet the minimum performance standards the agency is proposing.

Comments to the 1996 ANPRM provided no data on the other costs associated with an EOBR requirement, such as the time or effort needed to generate and maintain information, or to provide it to or for the FMCSA. The FMCSA has analyzed the information collection burdens of an EOBR requirement, including the following nine activities:

(1) Reviewing instructions;

(2) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;

(3) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;

(4) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;

(5) Adjusting the existing ways to comply with any previously applicable instructions and requirements;

(6) Training personnel to be able to respond to a collection of information;

(7) Searching data sources;

(8) Completing and reviewing the collection of information; and

(9) Transmitting, or otherwise disclosing the information.

The FMCSA especially is interested in comments addressing the agency's estimates of the specific costs associated with requiring EOBR use by drivers in Type 1 and 2 operations.

The FMCSA is interested in information about the prevalence of EOBRs, ''smart'' card adapted EOBRs, and electronic control modules (ECM) of any kind presently in use; the cost of converting existing equipment to HOS monitoring capability, such as ECMs; the availability of conforming technology, assuming a performance standard; the installation and maintenance costs of some of the newer devices (our evaluation relied on 1997 estimates); the phase-in period required before full compliance could be achieved; any difficulties in training drivers, clerks, and managers in the use of this technology; and any effects on productivity, as well as on compliance with the HOS rules. The ECM is a computer having about twice as much power as the average personal computer (PC). The ECM contains the heavy-duty-diesel-engine's electronics package. This electronic black-box is an outgrowth of meeting the Environmental Protection Agency's emission standards.

The agency is interested in the potential of ''smart card'' technology. Each driver would have a card that provided identifying data (e.g., a thumb print, retinal scan, or other biometric identifier). To be useful for HOS enforcement, smart cards would be subject to certain performance standards. They could allow data to be written to the card only from a CMV-installed unit; the data would only include driving hours; the card would store the data for 30 days or longer and allow reading capabilities only at motor carrier facilities or during law enforcement stops; the card would be tamper-proof to the maximum extent practicable; and only one card would be issued to each driver. The FMCSA would like comments from manufacturers and others about the availability of such devices and methods for recording work time and monitoring compliance with HOS requirements.

The FMCSA believes the training needed to operate an EOBR system would be minimal. The agency would like comments regarding the training necessary to operate EOBRs well enough to comply with this NPRM. Comments should also address any recurring training that may be needed to maintain proficiency.

The FMCSA is proposing to require the use of EOBRs capable of tracking drivers' driving, other on-duty, and off-duty times for Type 1 and 2 operations only. Type 1 and 2 drivers must take at least 2 hours off-duty during each work day or at the end of the work day. Thus, the FMCSA needs to ensure the drivers are taking that time. The simplest possible device would be similar to what is presently permitted under 49 CFR 395.15, except that the regulations would allow a greater variety of technologies including the use of terrestrial and satellite systems, and driver ''smart cards.'' The FMCSA would continue to require that motor carriers ensure the devices meet the standards currently included in § 395.15(i). Therefore, the device would have to be capable of:

(1) Meeting certain design and operational standards, including being tamper-resistance to the maximum extent practicable.

(2) Producing pertinent information in the vehicle for use both by the driver and safety investigators/enforcement officials.

(3) Identifying the driver.

(4) Computing the relevant totals of driving, on-duty, and off-duty hours in relation to a daily, weekly, or longer period.

(5) Calculating time and location so that changes in duty status can be recorded accurately.

Location recording under the current § 395.15 regulation occurs without the aid of terrestrial or global positioning systems and requires input by the driver. The FHWA began allowing a few motor carriers to pilot demonstrate terrestrial and global positioning system technologies that could assist EOBRs (63 FR 16697, April 6, 1998). These pilot demonstrations are continuing. Off-duty and on-duty not driving times must also be input by the driver. Opportunities for driver input, however, increase the likelihood of driver falsification and allowance of that falsification by motor carriers. Although terrestrial and global positioning systems are available for implementation now, there are many assumptions their system designers have been making that may result in violations of the current HOS regulations. In a few cases, the FMCSA discovered actual violations of the current HOS regulations. The FMCSA believes it must address these assumptions, many that may have been made yet have gone undiscovered, and design prohibitions for such assumptions before proposing prohibitions of driver interactive EOBRs and future proposals requiring EOBRs that have no capability for driver interaction.

The benefits of this NPRM can be achieved by understanding how the rule helps drivers and motor carriers and also making a dramatic change in the present attitude toward compliance in long-haul and regional operations. These are unlikely without persuasive evidence that compliance would not only be expected, but monitored and enforced. The presence of an objective tamper-proof monitor on board long-haul and regional operating CMVs would achieve that objective because they are the ones where the greatest percent of violations are currently found.

The FMCSA is also required by the Paperwork Reduction Act to count, as a Federal requirement, information collection burdens imposed through the MCSAP by a unit of State or local government, except to the extent that the FMCSA shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal mandate. The FMCSA would like to know whether States currently have such requirements for interstate motor carriers to use EOBRs.

One of the principal monitoring tools for HOS compliance has been safety inspections on the roadside. The FMCSA and its State partners complete more than two million of these inspections annually.

The EOBR time records can be used for WHD compliance along with the associated payroll and other records. The driver, who is an employee of a motor carrier or a motor carrier's lessor, would have an incentive to record hours on duty accurately—the driver would know the hours recorded are directly proportional to the minimum wages the motor carrier employer must pay under the FLSA and WHD's implementing regulations. The WHD has told FMCSA it will use a driver's documentation of hours worked, if a dispute arises with the employing motor carrier.

Using the current situation, motor carriers generally have relied upon the records of duty status under 49 CFR part 395, including EOBRs under § 395.15, to calculate the minimum wage required to be paid to the driver for each workweek. Some motor carriers, drivers, and

enforcement officials have not understood the differences between the current FMCSA and WHD definitions of duty time, off duty time, interstate commerce, and record keeping methods. The FMCSA believes some motor carriers that have not understood the difference may miscalculate the minimum wage, placing the motor carrier in violation of the FLSA. The driver may lose pay because the driver recorded time based upon the current FMCSA regulations and guidance rather than using the WHD regulations and guidance for duty time.

Likewise, enforcement officials who do not understand the differences may attempt to compare a WHD-compliant time card to an FMCSA-compliant RODS. The enforcement official may see on the WHD-compliant time card that the driver ''punched in'' at 8:00 a.m. The FMCSA-compliant RODS, however, may show the driver off-duty until 11:00 a.m., when the load was ready for transport. An enforcement official who does not know the differences may cite a false RODS out of ignorance of the different definitions of duty time and off-duty time. Both records were accurate, but the different definitions led to a perceived conflict.

Using standard definitions of on-duty and off-duty time, and using standard DOL HOS recordkeeping methods that most employers subject to the FLSA are required to use, will help to fix these types of misunderstandings and violations of laws and regulations.

G. Supporting Documents

Section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA), Public Law 103–311, 108 Stat. 1673 (August 26, 1994) required the Secretary of Transportation to define supporting documents used to verify drivers' HOS and to prescribe regulations governing their use to improve both: (A) Compliance by CMV drivers and motor carriers with the HOS requirements and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

1. 1998 Notice of Proposed Rulemaking

On April 20, 1998, the FHWA published an NPRM (63 FR 19457, RIN 2125-AD52) requesting comments on a proposed definition of ''supporting documents'' for the HOS regulations. The FHWA proposed that motor carriers develop and maintain effective auditing systems to monitor the accuracy of the drivers' RODS. The NPRM proposed that failure to have such a system would require the motor carrier to retain various types of business documents. The use of electronic recordkeeping methods was also proposed as a preferred alternative to paper records.

Today's NPRM incorporates and supersedes the supporting document NPRM and will address records and supporting documents for use in monitoring and enforcing minimum hours off duty, rest, and work of CMV drivers.

2. Comments to Docket FHWA–98–3706 (Supporting Documents)

The FHWA received 41 comments in response to the 1998 Supporting Documents NPRM. Two organizations each submitted two comments which were counted as separate comments. The respondents represented 3 advocacy groups, 2 consultants to the industry, one labor union, 17 motor carriers, 13 trade associations, including one motor coach association, 2 on-board recorder manufacturers, and one State government agency.

Three comments fully support the NPRM. They were Bestway Express, Inc., IIHS, and the National Propane Gas Association (NPGA). Bestway Express had two suggestions in addition to its approval of the FHWA's efforts to develop:

> a process that allows self assessment in program design for safety management. As an industry, and partner with Government, we need these kind of initiatives as we go forward with performance based standards. The approach that you have developed where a carrier can design a self monitoring system, get pre-determined FHWA assessment of that program, and then can implement their program is commendable.
>
> A self monitoring system, if Safe Stat is the performance standards, is the only model to use as a long range implementation plan.

The NPGA considered the proposal ''a significant step in implementation of electronic document technology into the operations of motor carriers generally.''

In supporting the proposal, the IIHS noted:

> Although the proposal is less stringent than authorized by the Act, it is an important first step in improving truck driver and motor carrier compliance with HOS rules. Any weakening of the proposed rule would contravene the intent of the Act.

Many commenters (23) expressed their belief the supporting documents NPRM should have been deferred until it could be considered in the context of the overall HOS rules. They believed the current HOS rule needs repair, rather than a system to support it.

The National Association of Small Trucking Companies (NASTC) commented that carriers generally recognize their obligation not only ''to trust but to verify'' the drivers' logs as submitted. It noted that the proposal squarely aimed at ''placing the burden on the carrier to catch drivers who make fraudulent log entries,'' and that ''the DOT cites over 30 different extrinsic documents which typically cross a trucking company's desk and suggests that some, part, or all of these documents can be used as an external check to stop log falsifications.''

Many commenters believe the FHWA proposed significant burdens upon industry by requiring records be kept that are not now produced. Many believe few if any documents are produced for each beginning, intermediate, and end of trip and that those documents that are produced do not have the information required by the statute, such as driver's name and the vehicle number.

Yellow Corporation's comments are indicative of LTL carriers generally. It operates between fixed terminals, and manages HOS compliance through the payroll system, which, Yellow notes, is also used by FMCSA personnel during compliance reviews. Like many others, Yellow only sees the proposal as expanding the burden of collecting many unnecessary records, when its present systems are adequate to do the job.

A few commenters were very concerned that the FHWA had misinterpreted and misapplied the definition of ''burden'' in 5 CFR 1320.3(b)(2). They believe that collecting many receipts and keeping them for four months is not usual and customary in the motor carrier industry.

The NASTC also believes that the supporting documents rule should provide examples of acceptable carrier programs that would meet the NPRM's requirements. The writer of the comments describes an intricate system of log verification employed by ''one of our larger, more sophisticated members.'' He notes, however, that although the system could be reduced to writing for auditing purposes, the safety investigator conducting a compliance review would not be able to verify all the checking done by the record's clerk, because the external documents used for that purpose are not retained centrally, or maybe not at all. Without reasonable guidelines, perhaps in the form of models or examples of acceptable systems or programs, the motor carrier can never know whether its system will pass muster. He also observes that the proposal fails to deal with distinctions between system design and system implementation, so that a carrier with an effectively designed system may have to start over from scratch because a safety investigator may find

shortcomings in the way it is implemented.

In addition, a few comments provided specific responses to the 9 questions the agency asked.

Question (1) What types of self-monitoring systems should be considered in addition to the type proposed in this document?

Yellow Corporation contended that any software application that verified RODS through comparison with internal documents should be acceptable, and that the FHWA should not limit a carrier's choice of a self-monitoring system to any specific applications. Alabama Power agreed with Yellow so long as the self-monitoring scheme would provide a reasonable assurance of compliance. ROCOR Transportation was satisfied with the present system with the possible addition of the existing interpretive guidance.

Question (2) Whether and what conditions should be imposed upon motor carriers (such as accident or out of service prevention performance history) before the FHWA would authorize a different self-monitoring system as an alternative to compliance with this proposed rule?

Yellow Corporation opined: ''The only conditions that should be considered in determining if the motor carrier must change its self monitoring system should be those directly related to errors/violations in the RODS or repeated violations of HOS.'' Alabama Power, on the other hand, believed the FHWA should consider relative accident and out-of-service rates. Accident and out-of-service rates should be established for determining when additional monitoring is necessary. ROCOR Transportation, once again, is satisfied with the current system.

Question (3) Whether motor carriers seeking additional authorization should have some established safety record with the FHWA or other State or local enforcement agencies?

This question apparently caused some confusion as Yellow Corporation answered as though the agency were asking about expanded operating authority, and believed the FHWA should conduct a compliance audit of any carrier seeking to expand its operation by more than 20 percent. Alabama Power believes that carriers or industries with established good safety records should be exempted from all or part of the HOS regulations.

Question (4) What must happen before the FHWA should disallow the use of a self-monitoring system or an alternative system?

As noted above, Yellow believes that the system should not be blamed for failure of individuals to comply, and that the FHWA should establish standards for any such system. Alabama Power leans toward a performance test which demonstrates the value of the system by performance on the highway, i.e., high accident and out-of-service rates. ROCOR Transportation believes the FMCSA safety investigator ought to be able to determine whether a carrier is effectively using a system, and make recommendations accordingly.

Question (5) Are there any other advanced technology systems currently in use or under development that the motor carrier industry may use to validate HOS or support the RODS?

Alabama Power believes most advanced systems are cost prohibitive, especially for utility companies where driving is a very minor part of their business. ROCOR Transportation acknowledged the industry has started using satellite technology.

Question (6) Should waivers be considered on a case-by-case basis for other systems that do not quite meet these requirements, but may have other compensating features that produce equivalent safety results?

Yellow's position is that the standards must recognize that differences in operations and practices will mean differences in monitoring programs. Therefore, variances must be considered on a case-by-case basis. Alabama Power advocates a more open system that suits the carrier's needs.

Question (7) Under what circumstances should the use of such alternative systems also operate as a substitute for the requirement to prepare and maintain RODS? Demonstration of the effective use of a system, in whole or in part, for verification should obviate any necessity to further examine the information produced by the system by enforcement personnel.

Yellow would prefer criteria that would accurately capture the hours and be verifiable to a particular driver through a failsafe means, e.g., a code or electronic signature. However, the company believes ''(o)nly when all parties requiring HOS information have the most advanced technology can alternative systems fully replace the current requirement.'' Alabama Power would permit any normal timekeeping system when ''the nature of a carrier's or industry's business limits the exposure to public safety,'' and the carrier or industry has an adequate commercial motor vehicle safety record.

Question (8) What impact would a six-month or longer record retention requirement have on the Federal government, State governments, and motor carriers?

Yellow is firmly opposed to any expansion of the present six-month retention requirement, which, it believes, is more than adequate for purposes of evaluating compliance. Assuming the retention requirement includes all supporting records, the company contends a carrier's administrative costs would increase significantly. Alabama Power agrees that, as written, the proposal would significantly increase the administrative burden of carriers. ROCOR Transportation notes the irony of suggesting increased burdens at a time when the pressure is on to reduce administrative workload. ROCOR would prefer reducing the retention period to four months, which would, in its judgment, be enough to enable FMCSA investigators to assess a carrier's safety posture.

The Georgia Public Service Commission (GPSC) believes the idea of reducing the retention time of RODS from six months to four months is unnecessary. It argues that in the current downsizing climate of government, six months is barely enough time to conduct compliance reviews where complaints have been received and follow-up on serious crashes. It believes reducing the retention period to four months would result in time restraints which would not work for the governments as the workload of State and Federal compliance review personnel is increasing—not decreasing. It believes this would allow many serious complaints and crash investigations to go unfinished as the evidence for substantiating the potential violations will have been discarded by the motor carriers. They suggest this issue is best left alone since most carriers and Congress are comfortable with the six-month time frame.

Question (9) Would we enhance enforcement and prosecution efforts with the longer retention requirement (e.g., the ability to adequately enforce the rules, collect evidence for a criminal case, prepare the case, and successfully prosecute drivers or motor carriers for deliberately or recklessly violating HOS restrictions)?

Neither Yellow nor Alabama Power sees any benefit in longer retention requirements.

3. FMCSA's Response to the Comments on the Supporting Documents Proposal

Obviously, the FMCSA agrees with those commenters who wanted to merge the supporting documents proposal into the HOS rule. The agency was under a legislative mandate to issue the NPRM on supporting documents, and used the

opportunity to gather useful opinions about a more systematic approach to monitoring HOS. However, the agency has now decided to merge the two proposals; some of the issues raised in the comments to the supporting documents proposal are addressed in this notice.

The FMCSA was attentive to the comments concerning the administrative burdens resulting from the prescriptive alternative. The FMCSA believes the NPRM may not have been clear; many commenters misunderstood the options in the original proposal, or, more likely, feared too much discretion on the part of safety investigators in determining the effectiveness of any alternate system. This was particularly evident in the extensive comments of the NASTC. The comments described a carrier program that would definitely have satisfied a requirement for an effective system, but the writer was apprehensive about the possibility that such a model program (although it was entirely a paper system) could be thwarted by a finding by a safety investigator that some element was lacking.

The actual intent of the proposal was captured much more accurately in the comments of Bestway, the NPGA and the IIHS. The FMCSA attempted to convert what appeared to be a very prescriptive statutory requirement into a way of breaking the mold of paperwork reliance. There still appears to be a pervasive reluctance on the part of industry to employ technology to verify compliance with HOS rules. The agency understands that certain segments of the for-hire motor carrier industry do not favor the FMCSA's and FHWA's Intelligent Transportation System (ITS) joint program encouraging the installation and use of such satellite technologies for ITS purposes, and at the same time, permitting FMCSA investigators the use of the same technology devices to assist in discovering violations of HOS regulations. On the other hand, there is a great deal of anxiety about increasing administrative burdens by requiring more verifying records to be used and maintained. What is missing is the acknowledgment by management of the widespread noncompliance with both the HOS restrictions and the preparation of RODS.

With respect to the retention period, the GPSC has persuaded the FMCSA that six months worth of records is needed for proper reviewing by Federal and State officials of a driver's and carrier's compliance with the rules and for crash investigations. The FMCSA has decided to retain the six-month requirement for this reason.

4. Modified Supporting Documents Proposal

The WHD regulations specify other business records motor carrier employers subject to the FLSA need to preserve for two or three years, records which the FMCSA proposes to use as its own under 49 U.S.C. 31133(a). The agency needs four pieces of information from 29 CFR 516.6 *Records to be preserved 2 years*, paragraphs (a)(1), (b), and (c), including:

(1) Supplementary basic employment and earnings records *from the date of last entry, all basic time cards or sheets on which are entered the daily starting and stopping time of individual employees;*

(2) Order, shipping, and billing records *from the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations;*

(3) Records of additions to or deductions from wages paid, including *those records relating to individual employees referred to in § 516.2(a)(10);* and

(4) *All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.*

The FMCSA is now attempting to go further than the 1998 supporting documents NPRM by proposing basic changes to both the HOS and the means of verifying compliance. This would address the issues raised by those commenters who believed the supporting documents proposal invited a ''one size fits all'' approach. The instant proposal focuses on those operations involving long or regional trips away from a home base with little supervision, contact with, or control over the driver. The paperwork burden for all other operations would be minimized, and, whenever possible, the FMCSA would be prepared to accept records that are required by other Federal agencies, notably the DOL's Wage and Hour Division.

The FMCSA believes this approach is consistent with the requirements of Section 113 of the HMTAA. The objective of that statute was to improve the enforcement of the HOS regulations and to simplify the recordkeeping requirements of motor carriers. The proposal we are publishing today will achieve both of those goals.

Section 113(b)(4) requires the agency to allow ''motor carrier self-compliance systems that ensure driver compliance with hours of service requirements and allow Federal and State enforcement officers the opportunity to conduct independent audits of such systems to validate compliance * * * The proposal to allow the use of WHD time records by Type 3, 4, and 5 operations is even broader than the ''self-compliance'' system the HMTAA envisioned.

Sec. 113(b)(5) requires case-by-case waivers ''of certain [unspecified] requirements of section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto), when sufficient supporting documentation is provided directly and at a satisfactory frequency to enforcement personnel by an intelligent vehicle highway system * * * Section 395.8(k) requires (1) that motor carriers retain each driver's RODS and supporting documents for six months from the date of receipt and (2) that drivers retain possession of each RODS for the previous 7 consecutive days and make them available for inspection. Today's FMCSA proposal would require motor carriers to retain WHD-type time records for at least a full six months (motor carriers subject to the FLSA and WHD regulations, of course, must continue to maintain these records for at least two to three years). Only Type 1 and 2 drivers would be required to have time records available for inspection on the CMV. Those records would still have to cover the previous 7 consecutive days, but they would be maintained automatically by an EOBR; the driver would only have to register on-duty, non-driving time and locations where changes in duty status occur. Finally, while case-by-case waivers are not included in this NPRM, the proposal to eliminate paper logs for Type 3, 4, and 5 drivers more than meets the spirit of this paragraph. Furthermore, the agency is proposing to use as supporting documents those business documents already required by the WHD rules. The FMCSA obviously cannot provide case-by-case waivers of the regulations of another agency.

H. Revised Regulatory Options

After receiving the Expert Panel's report and reviewing the monitoring needs of motor carriers and the law enforcement communities, the FMCSA decided to revise its options based on the panel's recommendation to limit nighttime driving. The FMCSA revised

options A through E by developing five new options 1 through 5 that included the panel's recommendation in option 3. The FMCSA examined the benefits and costs for each option 1 through 5 explained below in the section headed VII. I. Benefits and Costs.

Under revised option 1 similar to option D, all driver types would have to be off duty for at least 12 consecutive hours each 24-hour cycle, and could be on duty the remaining 12 hours each 24-hour cycle. There would be no distinction between on-duty driving time and on-duty non-driving time. Drivers would be encouraged to begin work at approximately the same time each day, and would be required to have a mandatory ''weekend'' of at least 58 consecutive hours off duty per work week, i.e., a 58-hour ''weekend.''

Under revised option 2 similar to option B, most drivers would face the same requirements as under option 1. Type 1 and 2 drivers could work and drive up to 12 hours within a 14-hour work period during each 24-hour cycle, and would need a minimum of 10 consecutive hours off duty in each 24-hour cycle. The 2 additional off-duty hours could be taken during the on-duty period or added to the consecutive off-duty period. Type 1 and 2 drivers would also be allowed to use a two-week schedule for determining ''weekend'' off-duty time, with one short and one long weekend, each to include two sleep periods between midnight and 6:00 a.m. Type 5 drivers would need a minimum of 9 consecutive hours off-duty in each 24-hour cycle, and could work up to 13 consecutive hours, including driving, in each 24-hour cycle. Type 5 drivers would be limited to 30 hours of driving per week and like Type 1 and 2 drivers would need to take 2 additional off-duty hours during the on-duty period.

Revised option 3 is a variation of revised option 2 (up to a 14 consecutive hour work/drive/break/nap period), with the added provision that drivers would not be allowed to drive more than 18 hours per week between midnight and 6:00 a.m. as recommended by the panel.

Revised option 4 is a variation of revised option 2 (14-consecutive-hour work/drive/break/nap period), with the added provision that all Type 1 drivers would be required to use an EOBR. Revised option 5 is a variation of revised option 2 and 4 (14-hour work/drive/break/nap period), with the added provision that both Type 1 and 2 drivers would be required to use an EOBR. See Table 5.

TABLE 5.—FMCSA REVISED REGULATORY OPTIONS

Potential policy	These many hours off duty for sleep in one consecutive period	With at least these many additional hours off duty	Allowing the driver to work up to this many hours, including driving, in any combination	A weekly recovery period of at least	Records to be kept
1—Maximum 12 on, minimum 12 off.	12 hours	N A	12 hours	758 hours	Type 1 and 2 drivers use records similar to 29 CFR 516 with location changes and have available on the CMV, all other drivers' carriers use records similar to 29 CFR 516.
2—Maximum 14 on, minimum 10 off.	10 hours	2 hours	12 hours	32 to 56 hours	Type 1 and 2 drivers use records similar to 29 CFR 516 with location changes and have available on the CMV, all other drivers' carriers use records similar to 29 CFR 516.
3—Maximum 14 on, minimum 10 off.	10 hours	2 hours	12 hours daily (only 18 hours per workweek during the hours from midnight to 6:00 a.m.).	32 to 56 hours	Type 1 and 2 drivers use records similar to 29 CFR 516 with location changes and have available on the CMV, all other drivers' carriers use records similar to 29 CFR 516.
4—Maximum 14 on, minimum 10 off.	10 hours	2 hours	14 daily hours, 12 hours daily limited to driving, and only 18 hours of driving between midnight to 6:00 a.m. each workweek.	32 to 56 hours	Type 1 drivers required to use EOBR, Type 2 drivers use records similar to 29 CFR 516 with location changes and have available on the CMV, all other drivers' carriers use records similar to 29 CFR 516.
5—Maximum 14 on, minimum 10 off.	10 hours	2 hours	8 hours	32 to 56 hours	Type 1 and 2 drivers required to use EOBRs, all other drivers' carriers use records similar to 29 CFR 516.

I. Benefits and Costs

As discussed above in III. The Safety Problem, the agency estimates that fatigue is directly or indirectly involved in 15 percent of all fatal and injury crashes involving large CMVs, contributing to 755 fatalities and 19,705 injuries annually.

A complete discussion of the benefits and costs of this NPRM and alternatives the agency considered is in the PRE in the docket. The FMCSA invites comment on any aspect of the PRE used by the FMCSA. Please provide with your comments all data, studies, and reports relevant to the assumptions you rely upon that you believe the FMCSA should use. The PRE's discussion of crash reduction benefits, paperwork reduction benefits, total benefits, quantitative costs, and qualitative impacts can be summarized as follows.

1. Crash Reduction

Based on the FMCSA's review of all the research studies, the Expert Panel's review of those studies, the development of options to improve safety and health of CMV drivers and reduce CMV crashes caused by CMV driver fatigue, the FMCSA believes that options 1 and 2 could lower crashes by at least 5 percent. The FMCSA believes that at least 5 percent could be realized by its requiring motor carriers to

provide drivers with: (1) A 24-hour rest/work cycle rather than an 18 to 23 hour rest/work cycle; (2) opportunities for two additional hours to sleep; (3) a mandatory ''weekend'' minimum off duty period that includes two consecutive midnight to 6:00 a.m. sleep periods to resume baseline levels of sleep structure and waking performance and alertness; and (4) reducing daily duty time. The FMCSA also believes that an additional 2.5 percent could be realized through the limitation on nighttime driving, thus option 3 could realize at least an estimated 7.5 percent crash reduction. Options 1 and 2 are very similar. The agency made no attempt to differentiate between their safety impacts. Option 3 is a variant of option 2 by adding the limitation on nighttime driving.

The agency believes that, when fully phased in, option 4 could lower crashes by Type 1 drivers by at least 20 percent, and by all other drivers by at least 5 percent. The agency believes that option 5 could lower crashes by Type 1 and 2 drivers by at least 20 percent when fully phased-in, and by all other drivers by at least 5 percent. The agency believes that options 4 and 5 could have a significant impact on the crash rate of drivers who use an EOBR, because the proposal would help drivers and motor carriers make a dramatic change in their present attitude toward compliance in long-haul and regional operations. The FMCSA must insist on persuasive evidence that compliance occurs, is monitored, and enforced. The presence of the proposed objective tamper-proof monitor on board long-haul and regional operating CMVs is expected to achieve the extra 15 percent crash reduction by those Type 1 and 2 operations where the greatest percent of fatigue-related crashes are currently found. The FMCSA considers all our crash reduction estimates to be conservative. Table 6 displays the agency's minimum crash reduction levels for each option.

The FMCSA has estimated that motor carriers would phase in use of EOBRs in equal increments over the entire phase-in period, with 1/x (one divided by x) of EOBRs installed per year, where x equals the phase-in-period. Within one year of promulgation, one-half of large motor carriers' vehicles and drivers would use EOBRs, one-third of medium motor carriers, and one-fourth of small motor carriers. Benefits were estimated in conjunction with EOBR use. If carriers were unable to meet these installation schedules, they would be required to follow existing HOS and RODS requirements until they are able to comply. The estimated baseline crash reduction from the regulatory changes is 5 percent, while the reduction for motor carriers using EOBRs is 20 percent. This evaluation added in the 15 percent increment (20 percent minus 5 percent) over 1/x years for each size of motor carrier. For the first effective year of this rule, crashes by large Type 1 motor carriers would fall by 20 percent, for medium motor carriers by 10 percent, and for small motor carriers by 8.5 percent.

TABLE 6.—MINIMUM FATIGUE-RELATED CMV CRASH REDUCTION

Option	Description	Minimum reduction in fatigue-related CMV crashes
1	12 consecutive hours off duty, 12 consecutive hours on duty.	5 percent for all CMV crashes.
2	Type 1 drivers take 10 consecutive hours off duty 14-hour work period including 2 hours for breaks/meals/naps.	5 percent for all CMV crashes.
3	Limit on night time driving of 18 hours per week, Type 1 drivers take 10 consecutive hours off duty 14-hour work period including 2 hours for breaks/meals/naps.	7.5 percent for all CMV crashes.
4	Type 1 drivers use EOBRs, Type 1 drivers take 10 consecutive hours off duty 14-hour work period including 2 hours for breaks/meals/naps.	15 percent for Type 1 CMV crashes, 5 percent for all other CMV crashes.
5	Type 1 and 2 drivers use EOBRs, Type 1 drivers take 10 consecutive hours off duty 14-hour work period including 2 hours for breaks/meals/naps.	15 percent for Type 1 and 2 CMV crashes, 5 percent for all other CMV crashes.

The collective result of all the research performed on this subject leads the agency to believe that the effects of the proposals will be crash reduction. The agency has considered that by allowing drivers longer consecutive off-duty periods to obtain sleep, these options should reduce fatigue-related CMV crashes. As discussed above under VII. A. Research Findings, the research suggests that many CMV drivers are not getting sufficient sleep. Insufficient sleep leads to degradations of cognitive performance, including increased mental errors, lapses in vigilance, slower reaction time, and errors in judgment. These errors in turn heighten the likelihood of CMV crashes. The proposal would require longer continuous off-duty time periods, which will enable CMV drivers to have increased sleep time.

The FMCSA estimated a reduction of crashes for option 3, limiting nighttime driving. Chart 4, shown earlier in this NPRM, shows that the relative risk of fatigue-related crashes is higher during the night than at other times. The Expert Panel argued not only that the risk of fatigue-related CMV crashes is higher at night, but also that the overall crash risk is elevated during these hours. While mileage data that would allow for definitive calculations of the overall CMV crash rates by time of day are not available, it is clear that both fatigue propensity and the risk of fatigue-related CMV crashes peak at night.

The ultimate safety impact of option 3 would largely depend on how motor carriers adjusted their nighttime operations. Motor carriers could comply with this option in a number of ways: shifting traffic to daytime, hiring additional nighttime drivers, rotating existing drivers' schedules, or, most likely, using some combination of these options.

These adjustments needed for option 3, however, might have some safety downside. The most significant problem would occur if drivers alternated between daytime and nighttime driving. This would disrupt drivers' circadian rhythms, since they would not have a consistent start or stop time. The Expert Panel believes that ''if driving occurs at night or on an irregular schedule, 72 hours within 6 days is not scientifically defensible, and 36 hours off duty is not sufficient for recovery'' (Smiley and Heslegrave, 1997; Wylie *et al.*, 1997; Akerstedt, 1997; Johnson *et al.*, 1998).

Shifting traffic to early morning for option 3 might increase congestion during what is already one of the busiest

times of the day. While there might be an overall reduction in nighttime crashes, the extra traffic during already congested times of the day might result in an increase in daytime crashes. While the higher relative risk of fatigue-related CMV crashes at nighttime (Chart 3) suggests that daytime travel is safer, there would undoubtedly be an increase in daytime crashes on a per mile basis commensurate with the increased traffic. While the overall number of fatigue-related CMV crashes would likely fall somewhat, the FMCSA believes the number of fatalities and injuries per fatigue-related CMV crash might increase. The agency notes above that it is the truck driver who is the fatality in approximately 70 percent of crashes for which truck drivers are coded as fatigued. This is partly due to the fact that truck drivers are most fatigued during the part of the night that other drivers are least likely to be on the road. By increasing the amount of driving during hours when total vehicle traffic is higher, the smaller number of crashes that do occur are more likely to involve occupants of other vehicles. This may somewhat offset the reduction in the total number of fatigue-related crashes.

Options 4 and 5 have the most dramatic safety impact, with an estimated 20 percent reduction in certain fatigue-related crashes. Although these options allow the same number of driving hours as option 2, they also require use of an EOBR by Type 1 drivers (option 4) or Type 1 and 2 drivers (option 5). The agency's analysis of the research concludes that use of an EOBR reduces fatigue-related crashes by an extra 15 percent. This extra safety would result from increasing driver compliance with the HOS regulations.

The FMCSA noted above that the research indicates that HOS regulation violations are widespread. Surveys of drivers have found that 40 to 75 percent violate the HOS regulations, depending on the definition of violation used. The precise level of violation is less significant than the fact that it appears to be encountered constantly. EOBRs make it easier to verify drivers' compliance with the proposed rules, improve motor carrier ability to effectively manage driver compliance and enable safety investigators to better verify the driver's adherence to the proposed requirements. While EOBRs will not eliminate HOS violations, they would undoubtedly make violations more difficult to conceal. A driver who drives over hours currently can falsify any one of a number of entries on the RODS to make it appear that the driver is in compliance. The EOBR would provide certain pieces of driver-unalterable data, which would complicate the process of falsifying driving hours. An EOBR would make it easy for crash and other safety investigators to determine when a driver began to drive. Depending on the type of driver, the investigator would know that drivers working 12 to 14 hours after their starting time are in violation.

By making it easier for crash and other safety investigators to check adherence to new HOS requirements, the EOBRs should reduce the extent of violations by deterrence. If this is true, increased compliance with the HOS regulations should lead to a reduction in crashes. The agency concludes that EOBR use could result in a 20 percent reduction in fatigue-related crashes, 15 percent more than the estimated reduction from the change in hours alone. Because of the uncertainty about the precise reduction brought on by options 4 and 5, the agency has included sensitivity analysis of different possible safety impacts in chapter 6 of the PRE in the docket. Once again, the FMCSA invites comment on any aspect of the PRE, the data and estimates used by the FMCSA, and the conclusions reached as a result of the analyses of the benefits and costs. Please provide with your comments all data, studies, and reports you rely upon that you believe the FMCSA should use.

Table 7 shows the baseline estimates of the number of fatalities prevented by the different options. Table 8 shows the same estimates for injuries. Figures may not sum because of rounding.

TABLE 7.—ESTIMATED REDUCTION IN CRASH FATALITIES, BY OPTION AND DRIVER TYPE

Option	Type 1 carriers	Type 2 carriers	All other carriers	Total
Adjusted annual average baseline number of crash fatalities (based on 1991 to 1996)	298	215	243	755
1	15	11	12	38
2	15	11	12	38
3	22	16	18	57
4	60	11	12	83
5	60	43	12	115

TABLE 8.—ESTIMATED REDUCTION IN CRASH INJURIES, BY OPTION AND DRIVER TYPE

Option	Type 1 Carriers	Type 2 Carriers	All Other Carriers	Total
Adjusted annual average baseline number of crash injuries (based on 1991 to 1996)	7,785	5,613	6,307	19,705
1	389	281	315	985
2	389	281	315	985
3	584	421	473	1,478
4	1,557	281	315	2,153
5	1,557	1,123	315	2,995

2. Paperwork Reduction

All drivers of CMVs in interstate commerce are presently covered by the RODS requirement, except for certain drivers who operate within a 100 air-mile radius of their home base. These excepted drivers must be relieved from duty within 12 consecutive hours of the time they begin work. Their motor carriers must record information similar to the WHD-required information of starting time, ending time, and total time on duty. The RODS contains a series of graph grid pages, and the driver must categorize each 15-minute increment as either driving, on-duty not driving, sleeper berth, or off-duty. Drivers must also record the location of all stops, deliveries, and pickups, and the location of any change of duty status

(for example, from sleeper berth to driving). Drivers must keep their RODS of the previous 7 or 8 days on their CMV. The RODS must also contain identifying information about both the vehicle and the specific shipment. The complete RODS requirements may be found at 49 CFR 395.8 and 395.15.

As discussed above, employers subject to the FLSA also need to prepare a time record for drivers for wage and hour purposes. The employer of the driver may be the motor carrier, or it may be an owner-operator or independent contractor leasing employed drivers to the motor carrier. While the RODS and the WHD time record overlap somewhat, the DOT and DOL use different definitions of work time.

Because these options propose to eliminate the distinction between driving and non-driving work time, the FMCSA also proposes to remove the RODS requirement. Under options 1, 2, and 3, long-haul (Type 1) and regional (Type 2) drivers would be required to prepare a modified WHD time card, which would include the time and location of any change of duty status (i.e., from on-duty to off-duty). These drivers would also be required to keep their time record on their vehicle when driving. Under option 4, Type 1 drivers would be required to use an EOBR, while both Type 1 and 2 drivers would be required to use an EOBR under option 5. For all five options, motor carriers would be allowed to use the unmodified WHD time card for all Type 3, 4, and 5 drivers, and would not have to keep the time card on their CMVs. The agency would use the WHD time record to monitor compliance with the HOS regulations for specific drivers.

On March 11, 1998 (63 FR 11948), the FHWA published a notice and request for comment on its intent to request the Office of Management and Budget (OMB) to approve continuation of a paperwork collection request. Only one general comment was received in docket FHWA–98–3393. The IIHS supported continuation of the paper handwritten RODS until they are replaced by onboard computers. The FHWA had proposed in that docket that each driver works 240 days each year. This would be equivalent to working 5 days per week for 48 weeks per year. No comments were received about the FHWA's proposed estimates that include drivers taking 2 minutes a day completing an RODS, and that motor carriers spend 31 seconds per driver per day filing these records. Rounding down to 2.5 minutes per driver per day, and estimating that drivers work 240 days per year, this amounts to 10 hours per driver per year. Many Type 5 drivers already are exempt from this requirement, under the 100 air-mile radius exemption. Some drivers defined as Type 3 and 4 in this NPRM are also able to take advantage of the 100 air-mile radius exemption and forgo completing an RODS.

Most Type 3 and 4 drivers, however, would have this burden eliminated. Based on our knowledge of the motor carrier industry and our investigations of motor carriers, the FMCSA concludes that many Type 3 and 4 drivers drive shorter distances than a full 100 air-mile radius of their normal work reporting location and are relieved within 12 hours, and therefore are not currently required to fill out an RODS. We deduce from our knowledge and experience that one-fourth of the 3.997 million Type 3 and 4 drivers are eligible for the current 100 air-mile radius exemption, and the remaining 3 million Type 3 and 4 drivers are not. The FMCSA would appreciate comments whether our estimates of these numbers is on target.

Under all the options 1 through 5, most drivers would be able to use their time record in lieu of an RODS, and so would save 2.5 minutes per day. Under options 1, 2, and 3, Type 1 and 2 drivers would also be able to discontinue using the RODS, but they would have to carry their time records with them on the CMV and add city and State locations of all changes of duty status (from on-duty to off-duty, or the reverse). Option 4 would require Type 1 drivers to use an EOBR, while Type 2 drivers would be required to complete the RODS. Option 5 proposes that both Type 1 and 2 drivers use EOBRs. Option 4 requires Type 1 drivers use the RODS until their CMV is equipped with an EOBR, and option 5 requires both Type 1 and 2 drivers use the RODS until their CMV is equipped with an EOBR to fill out the RODS.

The additional location information that would be required on the modified WHD time record is not currently required on WHD time records. Based on its knowledge and experience of the motor carrier industry and the current requirements to record city and State/Province locations on the RODS, the FMCSA estimates that drivers would accumulate one-half (0.5) minute per day recording locations each time a driver changes duty status from on duty to off duty and back to on duty. The agency also estimates based on its knowledge and experiences requiring the current § 395.15 automatic on-board recording device requirements that it would take an additional half minute per day for drivers to supplement the electronic records, complete them, and transmit the electronic file information generated by the EOBRs. Therefore, the net reduction for drivers using a modified WHD time card or an EOBR is one and a half minutes per day (the elimination of the RODS saves them 2.5 minutes, which is partly offset by the half minute required for the additional change of duty status requirement on the time cards and an additional half minute for filing). Type 3, 4, and 5 drivers shifting to the standard WHD time card from the RODS would save two and a half minutes per day.

Table 9 shows that drivers and clerks in interstate and intrastate commerce currently spend approximately 42.5 million hours completing and filing the RODS. Three of the five options would result in the elimination of 37.5 million of these hours, while option 4 lessens the burden by 33.2 million hours and option 5 by 39.5 million hours. For options 4 and 5, the table presents the reduction occurring when the EOBR requirement is fully phased in. The reduction is somewhat smaller in the initial years. With an estimated wage of $11.91 per hour from the Current Population Survey (CPS), the resulting savings vary from almost $400 million to $470 million per year.

TABLE 9.—REDUCTION IN PAPERWORK BURDEN

Driver type	Long haul	Regional	Other	Total
Baseline Hours for Interstate and Intrastate Commerce	4,248,040	8,238,622	29,977,665	42,464,327
Reduction Option 1	2,548,824	4,943,178	29,977,665	37,469,672
Reduction Option 2	2,548,824	4,943,178	29,977,665	37,469,672
Reduction Option 3	2,548,824	4,943,178	29,977,665	37,469,672
Reduction Option 4	3,228,520	0	29,977,665	33,206,185
Reduction Option 5	3,228,520	6,261,352	29,977,665	39,467,537

TABLE 10.—ANNUAL BENEFITS OF PROPOSALS AFTER FULL IMPLEMENTATION BY ALL CARRIERS

	Annual fatal crashes avoided	Annual injury crashes avoided	Annual crash benefits, millions	Annual paperwork benefits, millions	Total annual benefits, millions	10-year discounted benefits, billions
Option 1	32	676	$183	$446.0	$629.0	$4.4
Option 2	32	676	$183	$446.0	$629.0	$4.4
Option 3	48	1,014	$274	$446.0	$720.0	$5.1
Option 4	70	1,744	$400	$396.0	$795.0	$5.4
Option 5	98	2,514	$558	$470.0	$1,028.0	$6.8

3. Total Benefits

Table 10 presents the agency's estimates of the crash reductions of the five options, along with the estimated monetary benefits. Because options 1 and 2 would reduce crashes by the same amount, they would result in an equivalent level of benefits.

The benefits of this rule would recur, as crashes are avoided, and paperwork reduced, every year the rule is in effect. Over a ten-year analysis period, all options would yield substantial benefits, ranging from $4.4 billion to almost $6.8 billion. Figures in the rightmost column of Table 10 are discounted at a 7 percent rate.

4. Quantitative Costs

The FMCSA has summarized the PRE's discussion of quantitative costs and qualitative impacts as follows:

The FMCSA defined a Type 1 driver as discussed above under the heading VII. C. Types of Motor Carrier Operations. The FMCSA used a University of Michigan Trucking Industry Program (UMTIP) driver survey, Belzer et al. (1999), to conduct the analysis discussed in this section. Since the FMCSA's definition of a Type 1 (long-haul) driver was different than the Belzer et al. (1999) definitions, the FMCSA used averages of the figures for long-haul and regional drivers from the Belzer *et al.* (1999) study.

As discussed in the PRE, the FMCSA found that at both the mean and median, Type 1 drivers work about 11 hours per day, 8.5 of which are driving. These drivers would be in compliance under these options, as they are within the existing regulations. At the 80th percentile, Type 1 TL drivers work 14.5 hours and drive 11 hours. These drivers may be in compliance with existing regulations if their driving time is not consecutive, but they would clearly be violating options 1 and 2, as they would exceed the maximum number of hours working. Chart 6 (shown previously in this NPRM) indicates that at approximately the 60th percentile, Type 1 drivers work 12 hours per day. This suggests that 40 percent of Type 1 TL drivers work more than 12 hours, and would have to reduce their daily working (and possibly driving) time under these options. The FMCSA concludes that some percentage of this 40 percent of Type 1 TL drivers are violating the existing rules.

The FMCSA estimates that at the 80th percentile, regional truck load drivers drive 13 hours, 1.5 hours fewer than their long haul counterparts. This adjustment accounts for the shorter trip lengths of these drivers.

LTL drivers operate quite differently than TL drivers. Instead of the highly variable long distance trips common among TL drivers (particularly owner-operators), LTL drivers tend to drive the same routes, often working at the same time of day. The UMTIP survey likely undersampled LTL drivers, as they are less likely to stop at rest areas than are TL drivers. Anecdotal evidence also suggests that LTL drivers are unlikely to violate the HOS regulations.

According to the 1997 Vehicle Inventory and Use Survey (VIUS), the successor to the TIUS, 31.4 percent of large trucks are used in LTL operations. We estimate that 80th percentile LTL drivers drive 12.5 hours per day, rather than the 14.5 hours of national TL drivers.

Approximately forty percent of long haul drivers, those between the 60th and 100th percentile working time, would have to reduce their working hours under the provisions in this NPRM. Drivers at the 61st percentile would only need a modest reduction in working time to come into compliance, while those at the 99th percentile would require a substantial reduction in hours. The FMCSA estimated the cost of bringing the midpoint over-hours driver, at the 80th percentile, into compliance with this NPRM.

The FMCSA calculated the number of hours motor carriers would ''lose'' if all over-hours drivers drove 12 hours per day. Carriers would need to make up approximately 586,000 missing hours, which translates into almost 49,000 drivers (586,185 lost hours per day divided by 12 hours per driver = 48,849 drivers).

Table 11 shows the number of drivers, hours at the 80th percentile, and assumed percentage of total drivers, and the number of drivers needed to make up for lost hours, for the different driver types used for the cost analysis in the PRE.

TABLE 11.—DRIVER CHARACTERISTICS BY DRIVER TYPE

	Percent drivers, by distance	Number	Hours worked, 80th percentile	New drivers needed
Long haul LTL	31	133,320	12.5	1,944
Long haul TL	69	291,484	14.5	24,290
Regional LTL	31	258,560	12.5	3,771
Regional TL	69	565,303	13	18,843

Motor carriers would need to hire a total of 48,849 new drivers, the vast majority of them in the truckload sector. This equals 3.9 percent of the current number of regional and long haul drivers, so with an elasticity of 10 (explained in the PRE), drivers wages will have to increase by 0.39 percent to induce 48,800 individuals to become truck drivers.

As discussed in the PRE, the cost to motor carriers would be determined by three interacting forces: (1) A reduction in wages to drivers who currently drive more than 12 hours per day; (2) an increase in wages for current drivers as a result of the need for higher wages to attract additional drivers; and (3) the wages for new drivers. Regression analysis of 1997 data from the March 1998 Current Population Survey shows that the average 60 hours a week truck driver makes $35,737, while the average 70 hours a week driver makes $38,959 annually. Just under 480,000 long haul drivers currently drive more than 12 hours, and would have their wages lowered under the options considered in this NPRM. Motor carriers would save $1.55 billion in wages for these drivers (479,843 drivers x ($38,959–35,737)).

The new equilibrium 60 hours per week wage would be $35,877 ($35,737 wage multiplied by 0.39 new drivers multiplied by 10.0 elasticity). This is $139.81 greater than the previous 60 hour a week wage, and all 1,248,667 long haul and regional drivers would get this raise. This would cost motor carriers approximately $175 million per year (1,248,667 drivers x $139.81 = $174.57 million).

The largest cost for motor carriers will be hiring new drivers. At an average wage of $35,877, the 48,849 new drivers needed will cost motor carriers $1.75 billion per year ($35,877 new wage multiplied by 48,849 new drivers). The net effect of these three changes will be an increase in drivers costs of $384 million per year ($1.755 billion for new drivers plus $174.57 million for existing drivers minus $1.545 billion for over-60-hour drivers).

Motor carriers could also attempt to make up for lost hours by increasing the number of hours current drivers work. Table 6 of the PRE indicates that many drivers drive significantly fewer than 12 hours per day, and it is possible that some of these drivers may be able to assume some of the lost hours previously worked by their colleagues. While this may be possible for some LTL operations, it seems unlikely to be feasible for TL motor carriers. A driver who runs out of hours distant from the home terminal in most cases can not be efficiently replaced with a new driver. While it is possible to imagine some circumstances where hours could be shifted to drivers who work less than 12 hours, it is unlikely that many hours could be replaced this way.

Finally, motor carriers could make up for lost drivers hours by increasing the efficiency of existing drivers. About one quarter of long haul drivers' time consists of non-driving work, much of which generates little value to carriers (or the economy). A moderate reduction in this proportion of non-driving work would allow for more hours of driving, which could offset the reduced hours of other long haul drivers. A smaller but still significant percentage of drivers time is spent waiting, which is entirely unproductive.

Motor carriers do not entirely control how many hours drivers wait or are engaged in non-driving work; and, therefore, would have difficulty dramatically reducing this percentage on their own. Drivers schedules are dependant upon the conditions and demands of shippers and receivers, so any concerted effort to reduce non-driving time would need their cooperation. It is not clear what incentive shippers, receivers, and others would have to cooperate, as wasted drivers time is generally no cost to them. Motor carriers could presumably squeeze some inefficiency out of the delivery system, but it is unlikely they could achieve a significant reduction in the amount of non-driving work time or waiting time without widespread cooperation from their customers.

Whether waiting time meets the legal definition of time worked depends upon particular circumstances. The determination involves scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, its relationship to the waiting time, and all of the circumstances. Facts may show that drivers were engaged to wait or they may show that they waited to be engaged (Skidmore v. Swift, 323 U.S. 134 (1944)). Such questions ''must be determined in accordance with common sense and the general concept of work or employment.'' (Central Mo. Tel. Co. v. Conwell, 170 F. 2d 641 (C.A. 8, 1948))

Driver-repairpeople are working while they wait for their motor carrier's customer to get the premises in readiness. The time is work time even though they are allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event they are unable to use the time effectively for their own purposes. It belongs to and is controlled by the motor carrier. In all of these cases waiting is an integral part of the job. The drivers are engaged to wait.

Periods during which drivers are completely relieved from duty and which are long enough to enable them to use the time effectively for their own purposes are not hours worked. Drivers are not completely relieved from duty and cannot use the time effectively for their own purposes unless they are definitely told in advance that they may leave the job and that they will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable them to use the time effectively for their own purposes depends upon all of the facts and circumstances of the case.

Drivers who have to wait at or near the job site for goods to be loaded are working during the loading period. If drivers reach their destination and while awaiting the return trip are required to take care of their motor carrier's property, they are also working while waiting. In both cases the drivers are engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if a driver is sent from Washington, DC to New York City, leaving at 6:00 a.m. and arriving at noon, and is completely and specifically relieved from all duty until 6:00 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged.

Drivers paid by the mile reported working an average of 66.3 hours in the week prior to the Belzer et al. (1999) survey, with 75.3 percent of those hours spent in driving, for an estimated 49.9 weekly driving hours at the mean (66.3 multiplied by 0.753 = 49.9). Option 3 would limit drivers to 18 hours of driving between midnight and 6:00 a.m. per week; 18 hours represents 36 percent of mean driving hours (18 divided by 49.9 = 0.36). However, the Belzer et al. (1999) survey asked drivers about driving between 11:00 p.m. and 7:00 a.m., whereas option 3 limits driving between midnight and 6:00 a.m. If the agency estimates a uniform distribution of driving over the eight hours, then hours between midnight and 6:00 a.m. should be 75 percent of those for the longer period. Thirty-six percent of nighttime driving for the longer period translates into 13.5 hours for the shorter period (18 multiplied by 0.75 = 13.5). To accumulate 18 hours of driving between midnight and 6:00 a.m., 48 percent of drivers' time must fall between 11:00 p.m. and 7:00 a.m. (1 divided by (0.75) multiplied by 0.36 =

0.48). This is approximately equal to the percentage of night driving at the 75th percentile of the survey distribution, which suggests that about one-quarter of all drivers would be affected by an 18-hour limitation.

To calculate the marginal effect of this limitation, the agency computed the increase in wages required to shift someone at the 90th percentile of the percent night driving distribution down to the 75th percentile. To estimate the total social cost, the agency scaled this figure up by applying this change to one-quarter of the Type 1 and 2 drivers and one-eighth of Type 3, 4, and 5 drivers. The 90th percentile night driver has 66.7 percent of his driving at night, and to cut this level to the 46.7 percent of the 75th percentile night driver is a drop of 30 percent. The point estimate of the effect of the percent of night driving on the wage is ''0.0415. (This is based on the wage equation discussed in the PRE in the docket). This estimate is statistically significant at the 6.25 percent level. This estimated value can be interpreted as the elasticity of the wage with respect to the percent of night driving at the mean of the wage. At the mean wages but the 90th percentile of the night driving distribution, the elasticity equals 0.091 percent (''0.0415 x (0.667/0.303) = 0.091 percent). Hence, a 30 percent drop in the night driving percent should be associated with approximately a 2.74 percent increase in the wage (30 x 0.091 percent = 2.74 percent) or 0.027 x $.303 = $0.0083 per mile. This figure represents the extra per-mile wages drivers would have to be paid to compensate for their lost income from reduced nighttime driving.

Drivers classified as local in the Belzer *et al.* (1999) survey reported somewhat less nighttime driving than drivers classified as long-haul and regional. As discussed in the PRE, by surveying drivers at truck stops, the Belzer et al. (1999) survey probably does not capture a representative sample of local drivers. Most local drivers do not stop at truck stops, and those who do are likely to be systematically different from drivers who do not visit truck stops. Accordingly, the agency estimated that Type 3, 4, and 5 drivers are only half as likely as Type 1 and 2 drivers to drive more than 18 nighttime hours per week. Belzer et al. (1999) estimated that 25 percent of long-haul and regional drivers (those between the 75th and 100th percentile) would have to reduce their nighttime driving; the FMCSA reduced this figure to 12.5 percent for Type 3, 4, and 5 drivers.

The agency then multiplied $0.0083 per mile by the average annual miles for each operational type. The definition of drivers from the survey probably does not match those envisioned in this proposal. The agency estimated that those labeled long haul and regional in the survey are Type 1 according to its definition, and drivers who call themselves local in the survey are closer to Type 2 drivers in the options. Type 3, 4, and 5 drivers were effectively outside the scope of the survey. Accordingly, the agency estimates that Type 1 drivers drive 114,000 miles annually, the average for long-haul and regional drivers, and Type 2 drivers drive 82,000 miles. The agency estimates that Type 3, 4, and 5 drivers operate 25,000 miles per year.

The average number of miles was multiplied by the 25 percent of Type 1 and 2 drivers, and the 12.5 percent of Type 3, 4, and 5 drivers, who drive more than 18 nighttime hours per week. The calculation for the total cost is as follows: $0.0083 per mile multiplied by the number of miles per year, times the percent of drivers who drive more than 18 hours per week. The total cost is high, approximately $375.3 million per year. See Table 12. This represents an annual cost, as motor carriers would continue to pay drivers extra to compensate for missing earnings. At a 7 percent discount rate, the ten-year cost of compensating drivers for reduced nighttime driving is $2.64 billion.

TABLE 12.—ANNUAL COST OF OPTION 3

Driver type	Number of drivers	Average miles	Cost per driver	Total cost, millions
Type 1	424,804	114,000	$946	$100.5
Type 2	823,863	82,065	$681	$140.3
Type 4	3,997,023	25,000	$208	$103.7
Type 5	1,190,740	25,000	$208	$30.9
Total	6,436,430			$375.3

Option 4 is similar to option 2, except that all Type 1 operation CMVs must be equipped with an electronic on-board recorder. This requirement raises the cost (and, as explained in the PRE, the benefit) of option 4 considerably.

The March 11, 1998 (63 FR 11948) notice and docket FHWA–98–3393 estimated that 5 percent of Type 1 operation motor carriers currently use EOBRs on all their CMVs. There were no comments objecting to this estimate. The FMCSA excluded any costs and benefits in this NPRM for the estimated 5 percent of EOBRs that motor carriers use. Motor carriers, therefore, would have to purchase 252,798 EOBRs (0.95 × 266,102).

The cost of EOBRs built only for HOS compliance is unclear. Queries of manufacturers, surveys of users and manufacturers of EOBRS, and comments to the ANPRM docket reveal a wide range of estimated costs. A 1997 motor carrier survey undertaken for the FHWA reported an average cost of $2,000 per EOBR. Campbell (1998). While the survey had a fairly low response rate, it is the only survey the FMCSA is familiar with which queried users about the cost of EOBRs. In comments to the ANPRM docket, the IIHS cited a telephone survey of on-board computer manufacturers. IIHS (1995) The cost for the first CMV ranged from $1,089 to $19,000. Most of the manufacturers cited a high and low cost, and the mean low cost was $4,500, while the mean high cost was approximately $9,000. For additional CMVs, prices ranged from $585 to $4,000, with a low cost mean of $1,150 and a high cost mean of $2,200. IIHS prices are presumably in 1994 dollars. Other ANPRM comments offered estimates between $700 (Rockwell Transportation Electronics) and $5,000 per vehicle (ROCOR Transportation).

The FMCSA also contacted two manufacturers of EOBRs, which quoted prices of $2,000 and $2,400. These manufacturers also cited other costs, such as software, driver cards, card readers, and training. These items could double the per unit cost, depending on the specific configuration and assumptions about the number of drivers per carrier and terminal. However, it appears that these prices are for high-end models, which have many

capabilities in addition to the ability to record HOS. These extra capabilities include such items as speed governors, recording various engine and mechanical data, and global positioning system tie-ins. Options 4 and 5 would require carriers to use an EOBR for HOS compliance only. Therefore, the costs for the extra capabilities should not be included as a cost of these options.

The FMCSA also contacted a manufacturer of electronic tachographs for the European market that could also be produced for the U.S. market, too. Electronic tachographs have not yet been mandated in Europe, but requirements for them have continually been proposed by the European Economic Community. This manufacturer states its electronic tachographs for the European market are EOBRs with built-in global positioning system (GPS) technology. During an FMCSA site visit, this manufacturer stated anticipated prices for its new model being designed for the European market. The manufacturer anticipates a unit purchased by a power unit manufacturer for the European market and installed by that power unit manufacturer on the assembly line to be about $180 per power unit, while aftermarket versions of the same new model for the European market could be $600 to $700. Costs of installation for the power unit manufacturer during power unit assembly should add about 0.25 hours to the process, the manufacturer estimated. Aftermarket and retrofit European electronic tachographs should require up to 2 hours additional labor and possibly a wiring harness adding $50 to $60 to the aftermarket equipment cost, the manufacturer estimated.

The manufacturer's system would record the information on an individual driver's smart card as this manufacturer believes the European requirements would expect them to require. The licensing agencies in Europe would issue the cards to the drivers. The additional cost of the smart card's could be $1.00 to $2.00, though the manufacturer stated that if the European licensing agencies incorporate a silk-screened commercial driver's license (CDL) onto the smart card, the cost may be even less for those licensing agencies as the card would be multi-functional. The manufacturer stated it would expect the quantity of multi-function CDL/HOS smart cards to be required would be in the millions so the cost should be small. This would, of course, depend upon whether such a system were to be mandated by European licensing agencies, since it is not being proposed as a requirement in this NPRM. The manufacturer was targeting its price of the hardware located at the terminal or principal place of business to be less than $500. No software would be required for the manufacturer's basic system to fulfill an HOS mandate. The manufacturer currently has a similar product offered for sale at $695. The manufacturer believes one day of training per driver would be adequate for its products and that the cost of the training would range from $400 to $650 per day. Thus, taking all of these prices into account, this manufacturer would be able to provide a factory-installed European electronic tachograph, support systems, and training for one vehicle at about $1,080. This would not include any additional costs marked up by the power unit manufacturer.

This analysis uses a purchase price of $1,000, with annual costs (for maintenance, training, etc) of $100 per unit. The FMCSA also estimated that drivers of vehicles with EOBRs would need 2 hours of training, at $11.91 per hour (from the CPS). Because of the wide range of estimates, the FMCSA analyzed the impact of higher and lower EOBR prices.

Over ten years, Type 1 operation motor carriers would pay $253 million for the purchase of EOBRs, $229 million for maintenance, and $9.6 million for training, for a total undiscounted cost of approximately $492 million.

Option 4 has the same driving limitations as option 2, and, therefore, the analysis carried out above is applicable for this option. The FMCSA calculated the discounted cost to be $2.7 billion. At a 7 percent discount rate, the net present value (NPV) of these costs is approximately $3.024 billion.

Option 5 is the same as option 4, except both Type 1 and 2 drivers would be required to use EOBRs. Minimum off-duty hours, maximum driving time, and ''weekend'' rest provisions are unchanged.

The FMCSA estimates that there are 266,102 Type 1 CMV power-units, and 242,069 Type 2 CMV power units. A total of 508,171 CMVs would be affected by this option. Five percent of CMVs are already equipped with EOBRs, so the remaining 482,766 vehicles would have to be equipped with them.

Over ten years, purchasing EOBRs would cost motor carriers $483 million, maintaining the devices would cost $438 million, and training would add another $28.3 million. The total NPV of the driver and EOBR costs is approximately $3.444 billion, with an annualized cost of approximately $490 million.

5. Small Business Costs

Approximately 500,000 motor carriers were listed on the FMCSA's Motor Carrier Management Information System (MCMIS) census file in the fall of 1999, and the FMCSA has data on the number of vehicles owned by 413,000 of them. Almost one half of the motor carriers with size data have only one truck, and 95 percent of motor carriers, almost 395,000, have 20 or fewer trucks. These small motor carriers owned approximately 37 percent of the registered trucks. The average small motor carrier operated just under 3 trucks.

Small long-haul and regional carriers would face significant costs from this proposal, particularly options 4 and 5. These motor carriers would bear 37 percent of the higher wages and EOBRs. The FMCSA estimated that driver wages would rise by $384 million per year. Small carriers would bear 37 percent of that cost, approximately $142 million annually, which equals $361 per small motor carrier. Small motor carriers with larger fleets will pay more than their smaller counterparts.

Under option 4, small long-haul motor carriers would face an extra $177 million over ten years for EOBRs ($135 million discounted). Purchasing the EOBR constitutes approximately $100 million of this cost, and it is split evenly between the first four years. Ongoing maintenance accounts for the bulk of the remaining costs, and it is spread out over ten years. EOBRs will cost the average small long-haul motor carrier $2,850 to purchase and $282 annually for maintenance (undiscounted).

Option 5 would cost small long-haul and regional motor carriers $180 million undiscounted to purchase EOBRs, $152 million discounted. Annual costs equal $17.9 million undiscounted, for a total of approximately $103 million discounted over ten years. Per carrier costs are the same as for option 4, because of the method used for calculating costs.

Data on firms and receipts from the Small Business Administrations (SBA) web site were used to generate an estimate of average receipts for small motor carriers. See *http://www.sba.gov.* The FMCSA used data from Standard Industrial Classification (SIC) codes for trucking, SIC codes 4200 through 4214. Small motor carriers, defined as those with fewer than 20 employees, had average annual receipts of just over $400,000 in 1996. First year costs of $3,132 ($2,850 plus $282) equal approximately three fourths of one percent of the average small motor carriers receipts.

The previous calculations include only motor carriers in SIC codes 4200 through 4214, which include motor freight transportation and warehousing, trucking and courier services, local trucking without storage, non-local trucking, and local trucking with storage. Many small establishments covered by this NPRM are in other industrial sectors, and therefore would not be included in this estimate. There are a large number of private carriers, those which do not accept for-hire shipments, but instead serve as a shipping subsidiary of an establishment in a different line of business. Examples include bakeries or groceries which own small fleets of trucks to deliver their goods, or a touring musician who travels via a privately owned motor coach. The FMCSA was not able to generate data on these private motor carriers.

It is likely that both EOBR and driver costs could be lower than estimated above. First, we assumed that small motor carriers would purchase one quarter of their EOBRs in each of the first four years. In reality, it is likely that most small motor carriers will wait until the latter years to buy an EOBR. This will lower the discounted EOBR costs, as later year purchases are discounted more highly than earlier ones. In addition, small motor carriers who purchase EOBRs in year 4 will have to pay for maintenance for 3 fewer years than those who purchase in the first year.

Second, the FMCSA believes it is likely that the price of EOBRs will fall as production increases. As manufacturers gain proficiency in producing a good, improved use of labor and materials tend to lower the costs of production. Improvements include reducing the number and complexity of component parts, improved production of components, improved assembly speed and processes, reduced error rates, and better manufacturing processes. In a 1984 study of 108 manufacturing items from 22 field studies, Dutton and Thomas found a progress ratio of slightly higher than 80 percent, which means that each doubling of cumulative production reduces the cost level by 20 percent (Dutton and Thomas). Because of the phase-in period for small motor carriers, larger motor carriers are likely to bear the higher initial production costs.

In addition, wage costs may also be lower than estimated. Small motor carriers, like many small businesses, tend to pay lower wages than their larger competitors (Brown and Medoff for overall wage differential; Hirsch and Macpherson for motor carriers). Therefore, a given percent increase in wages will translate into a smaller absolute change than is the case for higher wage firms. The overall percentage figure used in this analysis may overstate the wage increases faced by small motor carriers.

As noted above, the FMCSA assumed that EOBRs will cost motor carriers $100 per year. This figure includes such items as maintenance, search costs, other transaction costs, and learning curve costs. While we were not able to directly estimate the separate cost components, we do not believe they will be significant. Manufacturers and salespeople for EOBRs will have a substantial incentive to provide information about their products to drivers. Unions, magazines, and trade associations are also likely sources of information for drivers. The costs to reach the long-haul and regional drivers who will be required to purchase EOBRs are fairly low, as these drivers often congregate at rest areas and loading docks, and many drivers communicate with other drivers via citizens band radio. The relatively high concentration of drivers lowers the cost of reaching drivers, provides further incentives for manufacturers, salespeople, and other to provide information on EOBRs to drivers.

The analysis also assumes that many motor carriers will be able to have EOBRs installed during routine annual checkups. Motor carriers are required by the FMCSRs to inspect their trucks annually, and many carriers routinely inspect their vehicles more frequently. The FMCSA believes that many motor carriers may be able to have an EOBR installed while their trucks are undergoing routine maintenance, lowering the opportunity cost of obtaining an EOBR. For most motor carriers, the opportunity cost of an EOBR is only the additional time required for installation once a truck is already available for service.

6. Qualitative Impacts

The FMCSA expects different qualitative effects from two aspects of the various options. The following section discusses the likely impact of options 1 (12 off, 12 on) and 3 (limiting nighttime operations) on the motor carrier industry. The agency does not believe options 2, 4, or 5 would have significant qualitative, intangible effects to warrant a discussion of them. The FMCSA invites comment on whether you believe there are significant qualitative, intangible effects to warrant a discussion for options 2, 4, or 5. Please provide with your comments the significant qualitative, intangible effects you believe must be considered along with all data, studies, and reports you rely upon that you believe the FMCSA should use.

Option 1 has two primary dimensions'daily and weekly scheduling requirements.

Daily Scheduling. The regional LTL industry would have the least difficulty conforming with option 1's daily schedule, as most freight follows the overnight rhythm. The ability to use the driver for 12 hours regardless of activity (driving or other labor) would give the motor carriers more flexibility. The agency is not sure how much of this additional capability carriers might use, but it would allow them to adjust according to the demands on their business. The national LTL industry would also be able to adjust to this option as carriers now use their drivers for less than 10 hours of driving at a time (at least the union carriers do not require drivers to do other work) and would have the additional flexibility to use drivers beyond 10 hours, if necessary.

One difficulty the national and regional LTL industry segments may face would be a possible reduction in overall labor time: option 1 specifies that 12 hours includes all breaks, so the net effect might be to reduce total daily labor by as much as 10 percent or as little as zero. Assuming drivers work 11 hours per day for five days per week, that gives them a 55-hour work week, which is about what the agency would expect in the industry.

The long-haul truckload industry, at the other extreme, would have to make major changes to adjust to this schedule. Many TL drivers currently work more hours than this proposed rule and any option considered would allow. If other reforms reduced drivers' non-productive time, the effect might be minimized. That is, since the median Type 1 driver drives only 8.5 hours daily, this might not affect the driving experience of drivers at the median. However, at the 75th percentile Type 1 drivers drive 11 hours, suggesting that the only way many drivers could comply would be by eliminating non-driving hours entirely. In sum, the Type 1 TL industry probably may have to hire more drivers than it currently has, assuming drivers and motor carriers comply with the regulation and assuming no change in the current framework that does not discourage shippers and consignees (and even carriers) from requiring drivers to wait.

Type 2 trucking-segment motor carriers generally operate in a fashion closer to LTL than to the Type 1 trucking-segment motor carriers. The Belzer et al. (1999) survey suggests

regional trucking falls approximately in the middle between local and long haul, depending on the measure. Regional drivers are more likely on average to perform labor other than driving than the long-haul TL drivers, though the latter have larger blocks of non-productive time. It is difficult to generalize among such a wide set of possibilities, in terms of industry segments and markets, so conclusions are difficult to make based on the option and the current work schedule. Work schedules vary quite widely among industry segments.

Weekly Scheduling. The options would require at least two nights off duty to obtain restorative sleep at the end of a work week. For option 1, the regional LTL industry already is structured in a way that accommodates this main research finding, at least as closely as any other group. The typical regional LTL driver begins his work week Monday evening or night and works five ''shifts'' of driving and labor ending up back at his home domicile by Saturday morning (some motor carriers might add an additional shift to allow drivers to reach maximum hours and earnings or to meet its service requirements). While the options would limit the flexibility of these carriers with respect to extra driving (because of the requirement of a minimum of 58 consecutive hours off once per week), they would have the least effect on these drivers.

The long-haul LTL industry does not schedule this same way. While the agency believes these LTL carriers could adapt to this schedule, they could do so only with some effort and dislocation. Their operations currently depend on a mix of regular bid runs, on-call drivers, and casual drivers. City drivers (pickup and delivery) have reasonably regular shifts, ordinarily are paid by the hour, and probably stick pretty close to the recommended HOS limits and schedule. Regular bid road drivers run steady operations between cities and haul the most predictable freight. As a result, their schedules are predictable and can most likely conform to the daily and weekly HOS options. Lower-seniority irregular road drivers who maintain a position on a seniority list (''road board'') are called in to work as the carrier is able to ''close out'' a trailer and send it to another destination. Such destinations vary, but sharp cutoff times needed for regional LTL aren't needed in national LTL and hence the daily discipline is not as critical. Larger terminals generally have a higher number of bid drivers, and may be able to create relatively restricted time windows during which daily dispatch can occur. Weekly regularity is a bigger problem, since that is not a current requirement. The agency has found no way to estimate the cost of compliance for this industry, though it would like comments from those in that industry about how to do it.

Both the regional and national LTL industries may find it difficult to adapt structurally to different options regarding HOS. Currently, these carriers take both business and regulatory constraints into consideration when planning terminal networks. That is, they consider the metropolitan area in which they may pick up and deliver freight (or where they have appropriate freight density) along with the distances between terminals where they transfer freight throughout their network. Any changes in daily HOS regulations could induce them to move terminals closer together or farther apart. Some readjustment would undoubtedly take place, but the agency believes this should not be considered a cost of this proposal. Motor carriers that do not relocate terminals would not face any additional costs because of this option, they would merely be bypassing an opportunity to realize savings.

The regional trucking industry (particularly TL and other-than-general-freight) probably could adapt to this change relatively easily also, since they are better able to get drivers home on weekends or on a weekly basis. Currently these carriers advertise ''home weekends'' as a recruiting tool, so their workers and potential workers presumably view this as a benefit. While they scarcely comply with the current weekly limit (Belzer et al. (1999) shows they work 60 hours per week at the median), their biggest problem probably would come more in adapting to each option's 60-hour limits than in adapting to the schedule providing for 58 hours of consecutive off-duty time weekly.

As was the case with the daily restrictions, the long-haul TL industry would find it the most difficult to adapt to the weekly limitations. Currently drivers are working through this period and view lengthy delays on the road as time wasters. Since these drivers typically sleep in their trucks and may have to spend this time in truck stops when their weekly break occurs on the road, they might not achieve the level of rest anticipated by the rule even if they obey the regulation. For analytic purposes, however, it might make sense to divide the long-haul TL industry into two broad segments.

Smaller TL motor carriers run their drivers long distances and generally have their drivers spending weeks on the road. While the agency has not analyzed this phenomenon in detail, research suggests the smaller carriers have fewer alternatives to this form of operation. That is, if they dispatch a driver on a long cross-country run they alone are responsible for locating freight for the return trip. The agency suspects their inability to locate freight on a timely basis contributes to the ''wasted time'' phenomenon observed in the Belzer et al. (1999) survey. Larger motor carriers may be more likely to locate freight for the return at a distance, though most carriers historically have faced challenges maintaining freight balance over long routes and between far-flung city pairs. See 3 MCC 665, at 675–678, December 29, 1937.

Perhaps the biggest advantage larger motor carriers (or more precisely, motor carriers with denser regional concentrations and freight lanes) have over smaller ones is some ability to relay freight from one region to another. The ability to relay freight from one driver to another would allow the motor carrier to keep drivers within a reasonable proximity of home and allow them greater opportunities to return home for the 58-hour breaks. Without this option, long-haul carriers and their drivers would find it rather difficult to adapt to these options. One unintended consequence might be a continuation of the current situation, whereby drivers extend their overall HOS by manually recording ''unpaid'' waiting time as off duty on the EOBRs, so that they can maximize driving time, which is paid.

Option 3 has two primary dimensions. The first dimension has potential HOS requirements that are the same as option 1. The second dimension is the limitation on nighttime driving.

The proposed limitation on nighttime driving could cause major restructuring in the LTL industry. Most LTL carriers, especially in the regional industry, run throughout the night. The regional LTL industry relies on nighttime driving. Its primary niche is the overnight service lane, and the structure of operations requires nighttime driving. To summarize and simplify their operations, they pick up freight during the afternoon and take it to a terminal where it is stripped off local trailers and reloaded on road trailers for delivery. The dock operation may take anywhere from three to five hours, after which the loaded trailers are dispatched over-the-road to a terminal or terminals in another city. The freight may be handled once or twice en route during the night. In any case, the freight arrives at its destination terminal the following morning, is stripped off the road trailer and loaded onto a city trailer. A city driver (''pickup and delivery driver'')

takes the freight to the customer, and repeats the pickup process. This pattern ordinarily continues Monday through Friday, with most freight picked up and delivered on those days.

Variations on this theme apply to the inter-regional LTL carriers as well as to national package delivery carriers, much of whose revenue actually consists of regional and local freight. National LTL carriers (along with inter-regional LTL carriers and package carriers) have wider variation in operations. The pickup-and-delivery processes are the same, but longer lanes mean that the intermediate dispatch can take place around the clock. Some motor carriers are structured such that inter-regional movement of freight would tend to happen on the same nighttime lanes on which their overnight shipments travel, and some motor carriers are structured so that second- and third-day freight will travel during the day for at least some of its intermediate movement. In any case, the entire industry depends on nighttime freight movement, and limiting drivers to 18 nighttime hours per week could cause major restructuring. Indeed, since this option likely would restrict drivers to three days of work per week (less than full time), carriers might adapt by switching their drivers between nighttime and daytime shifts throughout the week. While this would comply with the option, it could disrupt drivers' circadian cycles, eliminate the possibility of regular schedules, and possibly reduce overall safety.

The Belzer et al. (1999) survey suggests the extent of nighttime driving is somewhat lower than previously thought. The survey reveals that, on average, drivers already are well in compliance with such an option. The discrepancy comes at the extremes. People who are on the night shift perform all of their work during these hours, so as individuals they would be far from compliant with a potential 18-hour limit. This group includes those who drive for most regional LTL carriers, for package carriers, and probably for much of the inter-regional and national LTL industry. Those who drive for TL firms (particularly Type 1 drivers) may well drive a small enough percentage of their hours during this period that they would be in compliance. However, the drivers most likely to be compliant with the 60-hour limit probably are the very drivers whose industry would be altered dramatically as a result of such an option. Finally, while data are sketchy some analysts believe the LTL and package industry have a lower than average fatigue crash rate, so this option could affect the operations of those carriers that may contribute least to the nation's highway safety problem.

Regularity. The FMCSA also examined the cost of requiring drivers to begin work at the same time each day. The specific option under consideration would have prevented drivers from working until 23 hours after the previous day's start time. A driver who started work at 6:00 a.m. Monday would not have been allowed to begin again until 5:00 a.m. Tuesday, regardless of how many hours the driver had driven on Monday.

The agency used a wage equation described in the PRE to estimate the cost of regularity. The coefficient on the proxy constructed for irregularity (a binary variable) is −0.0196. It is statistically significant at the 14.5 percent level, which means it is estimated relatively imprecisely, lowering confidence in the estimate's numerical value. Under the assumptions outlined above, in equilibrium the agency expects that the typical irregular driver gets on average more miles (or more paid hours, where applicable), and so makes about the same annual income as a regular driver, other things being equal. If the agency prohibited irregularity, then these drivers would have to be paid almost 2 cents per mile more on the smaller number of miles they would then run to make the same annual wages.

Using the average annual miles from above (hence not trying to explicitly capture any implied change in miles), carriers would have to pay between $500 and $2,200 per year in higher per mile wages over fewer miles for the average irregular driver in order to restore his wages to their approximate pre-prohibition level. Hence society would pay that much more in higher freight rates for the freight each irregular driver now hauls, if irregularity were prohibited and all drivers complied with this prohibition.

The agency treated all drivers (including owner-operators and independent contractors) like the average mileage-paid driver, and estimated that 23.4 percent of this entire population is ''irregular,'' the percentage found in the Belzer et al. (1999) survey. This results in total costs of nearly $1.5 billion per year, as shown in Table 13. Regional drivers account for more than 55 percent of the total cost of a regularity potential option.

TABLE 13.—COST OF REGULARITY

Driver types	Number of drivers	Average miles	Cost per driver	Total cost, millions
1	424,804	114,000	$2,234	$207
2	823,863	82,065	1,608	837
4	3,997,023	25,000	490	69
5	1,190,740	25,000	490	369
Total	6,436,430	.....	.....	1,482

Because of the substantial cost, the FMCSA is not proposing to require regularity in this NPRM. The FMCSA recommends that carriers and drivers keep regular schedules to the maximum extent possible.

7. Benefits and Costs Combined

All options yield net benefits, with the benefits generally increasing with the option number. When paperwork benefits are excluded, only option 5 has net benefits, while the remaining options yield net costs.

Table 14 reprints the estimated fatal and injury crashes avoided from table 25 of the PRE, and presents estimates of the number of fatalities and injuries avoided. The rightmost column calculates the monetary value of these avoided incidents, based on a value of $3.388 million per fatal crash avoided and approximately $110,000 per injury crash avoided. Appendix C of the PRE explains the derivation of these values.

TABLE 14.—BENEFITS OF OPTIONS

	Fatalities avoided	Fatal crashes avoided	Injuries avoided	Injury crashes avoided	Total benefits, 10 year, billions, NPV
Option 1	38	32	985	676	4.4
Option 2	38	32	985	676	4.4
Option 3	57	48	1,478	1,014	5.1
Option 4	83	70	2,153	1,744	5.4
Option 5	115	98	2,995	2,514	6.8

Table 15 repeats the benefits from the previous table, along with cost figures from Chapter 5 of the PRE. It shows that all options yield large net benefits, ranging from almost $1.7 billion for options 1 and 2 to $3.4 billion for option 5. Costs and benefits are for ten years, and discounted at a 7 percent rate. Figures do not add because of rounding.

TABLE 15.—COSTS AND BENEFITS

	Discounted benefits, billions	Discounted costs, billions	Net benefits, billions
Option 1	$4.418	$2.696	$1.721
Option 2	4.418	2.696	1.721
Option 3	5.059	2.636	2.423
Option 4	5.364	3.083	2.281
Option 5	6.803	3.444	3.359

The costs and benefits of options 1 and 2 are identical, with net benefits of $1.7 billion. Although, as discussed in chapter 5 of the PRE, the flexibility of option 2 might lower motor carrier costs somewhat, no attempt was made to quantify lower costs. Option 3 has greater benefits and similar costs, resulting in net benefits of more than $2.4 billion. Option 4 yields a net benefit of almost $2.3 billion, while option 5 has the highest net benefits at almost $3.4 billion.

Thirty percent of the benefit of options 1 and 2 is due to the reduction in crashes, with the remaining 70 percent accounted for by paperwork savings. Forty percent of the benefit of option 3 is due to the reduction in crashes, with the extra 2.5 percent assumed reduction in crashes of option 3 accounting for this difference. Approximately fifty percent of the benefit of options 4 and 5 results from the reduction in crashes. Table 16 displays the costs and benefits of the proposals excluding this paperwork benefit.

TABLE 16.—COSTS AND BENEFITS EXCLUDING PAPERWORK BENEFITS

	Discounted benefits, billions	Discounted costs, billions	Net benefits, Millions
Option 1	$1.283	$2.696	($1.413)
Option 2	1.283	2.696	(1.413)
Option 3	1.925	2.636	(0.711)
Option 4	2.619	3.083	(0.465)
Option 5	3.597	3.444	153

Ignoring the paperwork benefits does not affect costs. However, the impact on benefits is substantial. The resulting reduction in benefits lowers net benefits for all options, with options 1 through 4 yielding net costs.

Table 17 shows the marginal costs, benefits and net benefits of moving from one option to a more stringent option. For all the changes in the table, costs increase, but not as much as benefits, so net benefits also rise. Net benefits jump by one third between options 2 and 4, and almost double between options 2 and 5. Moving from option 4 to option 5 increases net benefits by one half.

TABLE 17.—MARGINAL CHANGES IN COSTS, BENEFITS, AND CRASHES

Change	Fatal crashes	Costs, millions	Benefits, millions	Net benefits, millions	Net benefits, millions, no paperwork
2 to 4	(343)	$387	$946	$559	$948
2 to 5	(597)	748	2,386	1,638	1,566
4 to 5	(254)	361	1,439	1,079	618

Lowering the assumed accident reduction rates reduces the net benefits of all options. Because paperwork savings constitute a large part of total benefits, a given percent reduction in crashes results in a smaller reduction in net benefits. Halving the assumed crash reduction rate for all options lowers the net benefits of options 1 and 2 by approximately one third, and options 3, 4, and 5 by approximately 40 percent.

The PRE discussed the uncertainty concerning the percent of fatigue-related crashes. While the FMCSA estimates that 15 percent of all truck crashes are fatigue-related, analysts disagree about the precise figure. Accordingly, the following table shows the impact of lowering the baseline fatigue-related crash rate. Table 18 shows the costs, benefits, and reductions in accidents that would occur if 7.5 percent of all truck crashes were fatigue-related.

TABLE 18.—IMPACT OF 7.5 PERCENT BASELINE FATIGUE RELATED CRASH RATE

	Fatal crash reduction	Injury crash reduction	Safety benefits, millions	Net benefits, millions
Option 1	16	338	$642	$1,080
Option 2	16	338	642	1,080
Option 3	24	507	962	1,461
Option 4	35	738	1,341	1,003
Option 5	48	1,027	1,829	1,591

Lowering the assumed fatigue-related crash rate reduces the benefits of all the options, but all options continue to show sizeable net benefits. Increasing the baseline fatigue-related crash rate obviously results in higher gross and net benefits.

Chapter 4 of the PRE noted the uncertainty surrounding the price of EOBRs, with estimates ranging from $700 to $19,000 per unit. Because of doubt about the true cost, the FMCSA analyzed the consequences of higher and lower EOBR costs. Increasing the purchase price to $2,000 and the annual operating cost to $200 raises the cost of option 4 by almost $380 million, from $3.08 billion to $3.46 billion. Benefits continue to exceed costs, with net benefits of $1.9 billion. Excluding paperwork benefits, costs exceed benefits by $843 million over ten years. For option 5, costs shoot up approximately three quarter of a billion dollars, to $4.167 billion, while net benefits fall by the same amount, to $2.6 billion.

The FMCSA also analyzed the impact of halving the cost of EOBRs, to $500 per unit and $50 per year. Not surprisingly, costs for both options plummet. For option 4, costs falls by almost $189 million, and net benefits increase by that amount. The cost of option 5 declines by approximately $362 million, and net benefits increase commensurately. Neither option appears to be overly sensitive to changes in the cost of EOBRs. Only when the cost of EOBRs reaches $6,000 does the cost of option 5 equal the benefits. For option 4, the breakeven EOBR cost is approximately $7,000.

The FMCSA believes it is likely that the price of EOBRs will fall as production increases. As manufacturers gain proficiency in producing a product, improved use of labor and material tend to lower the costs of productions. Improvements include reducing the number and complexity of component parts, improved production of components, improved assembly speed and processes, reduced error rates, and better manufacturing processes. In a 1984 study of 108 manufacturing items from 22 field studies, Dutton and Thomas found a progress ratio of slightly higher than 80 percent, which means that each doubling of cumulative production reduces the cost level by 20 percent (Dutton and Thomas).

The effectiveness of EOBRs in reducing fatigue-related crashes is also subject to disagreement. The FMCSA argued in Chapter 4 of the PRE that drivers of vehicles with an EOBR will have 20 percent fewer fatigue-related crashes than those without the devices, because EOBRs will enhance enforcement officers to capabilities to detect violations and will thereby increase compliance. The FMCSA also evaluated the impact of varying the assumed level of reduction in fatigue-related crashes brought on by EOBRs.

Table 19 shows the costs, benefits and number of accidents that would be avoided if EOBRs only reduced fatigue-related crashes by 10 percent. Costs are unchanged, but fewer accidents are avoided, so total and net benefits drop for options 4 and 5. Benefits for both options remain positive. However, the net benefit of option 4 falls by $900 million, and that of option 5 by $1.5 billion. The net benefit of option 4, $1.34 billion, is less than that of options 1, 2 and 3. The new benefit of option 5 exceeds that of all options except option 3.

TABLE 19.—IMPACT OF REDUCING EOBR CRASH REDUCTION RATE TO 10 PERCENT

	Fatal crash reduction	Injury crash reduction	Safety benefits, millions	Net benefits, millions
Option 4	44	943	$1,717	$1,379
Option 5	53	1,135	2,054	1,816

The benefits and costs of this proposal, and of alternative options, depend on the values of several key parameters which can be substantiated by robust, empirical data. These include the following:

1. The relationship between on-duty and off-duty hours of service and crash risks;

2. The cost of relocating fixed terminals that motor carriers may have to incur in transitioning from the current to the proposed HOS rules;

3. The extent to which the proposal or some alternative would effectively reduce the driving time of current

drivers and thus result in the hiring of additional drivers;

4. The change in the driver workforce a motor carrier might reasonably anticipate in terms of numbers and levels of experience;

5. The cost of hiring additional drivers;

6. The effect of additional hiring on the average wages of new and existing drivers;

7. The effect of reduced hours on existing drivers' income;

8. The effect of experience on overall accident risk for existing drivers' experience levels and that of additional drivers required to make up the lost hours;

9. The baseline percentage of overall crashes that one could reasonably expect to be affected by a change in the HOS rules;

10. The rate of crash reduction caused by changes in HOS;

11. The effect of a change in HOS on the distribution of driving between nighttime and daytime hours and the effect of any such change on overall accident risks;

12. The effect of the requirement that motor carriers notify drivers about their responsibility for loading and unloading;

13. The effect of requiring or recommending that drivers take the opportunity provided by off-duty periods to obtain rest.

14. The cost of purchasing, installing, maintaining, and using EOBRs, particularly for small entities;

15. The effect of EOBRs on compliance with HOS rules; and

16. The reduction in paperwork burden for Type 1 and 2 operations (attributable to replacing RODS with EOBRs) and Type 3 through 5 operations (due to replacement of RODS with DOL time records).

The FMCSA seeks comments on the quantitative information presented on each of the parameters listed above and requests data and analysis regarding them and on any other aspects of the regulatory evaluation. Such information would be most useful if, to the extent feasible and relevant, it were: (1) Broken out by driver Type (i.e., 1 through 5) and (2) provided in such a way as to enable an analysis of alternative options. For example, data indicating an option would result in hiring of a substantially different number of additional drivers or have a demonstrably different effect on overall safety would be useful. Similarly, concerns about the data presented in this NPRM should be as specific and quantitative as possible to be helpful.

J. The Option Selected to Propose

Based on the options, the recordkeeping options, the benefit-cost analyses summarized above, and other regulatory analyses, the FMCSA has chosen to propose option 5. This option proposes to require EOBRs for Type 1 and 2 operations for compliance purposes only. EOBRs are not intended for other types of surveillance (e.g., audio or video recording). They are intended solely to satisfy HOS reporting and recordkeeping requirements. The information they collect and provide should not be used for other purposes. This option also requires Type 1 and 2 drivers have at least 10 consecutive hours off duty, work up to a 14-consecutive-hour period including taking 2 hours for breaks, meals, and naps. Option 5 saves the most lives, 115, prevents the most injuries, 2,995, and provides the highest net benefits to society, almost $3.359 billion, assuming that 15 percent of all CMV-involved crashes are fatigue-related and the proposed rules cut fatigue-related deaths each year by 20 percent for long-haul and regional motor carrier operations and 5 percent for all other motor carrier operations.

The FMCSA proposal would divide the motor carrier industry into the five types of motor carrier operations discussed in section VII.C., Types of Motor Carrier Operations, earlier in this NPRM.

Type 1—Long haul. These drivers are away from their normal work reporting location and home for more than three days at a time; in total, they are away from home for a large part of the year.

Type 2—Regional. These operations are similar to Type 1, except that drivers are away from their home base only 3 or fewer days at a time.

Type 3—Local split shift. Split-shift drivers spend most of their on-duty time driving, but most are local (or home-based), and their driving shifts are generally separated by several hours.

Type 4—Local pickup and delivery. Type 4 drivers work in the vicinity of their normal work reporting location. They are generally on regular schedules extending less than 12 consecutive hours from the time they report in until they check out. Driving is a significant part of their work, more than half of their on-duty hours.

Type 5—Primary work not driving. These drivers also work in the vicinity of their normal work reporting location. Unlike Type 4, however, they spend only one-third (or less) of their on-duty hours behind the wheel. The classification covers operators of CMVs whose duties do not center around driving, but who operate these vehicles as a necessary part of their work assignments.

In a document to be published at a later date in the **Federal Register**, the FMCSA will propose a new version of the FMCSRs using a question-and-answer format in which regulations applicable to drivers and motor carriers will be printed in separate sections. The HOS rules being proposed today are drafted in that format. Part 394 would apply to motor carriers and Part 395 to drivers.

VIII. Additional Petitions Received

The Office of the Secretary of Transportation (OST) and the FHWA received three petitions from motor carrier associations in August 1999. On August 5, 1999, the OST received a petition from the ATA requesting an addition to 49 CFR 5.1(d) and providing suggested rule text. ATA explained its purpose was to:

> give those affected by [FMCSA] hours of service regulations the opportunity to furnish to the Department comments on the scientific studies, findings and principles upon which the Department intends to base its decisions on [FMCSA] hours of service regulations.

The OST created docket number OST–99–6075 for this petition, denied the petition on September 29, 1999, and notified the ATA of its decision.

On August 11, 1999, the DLTLCA (Distribution and LTL Carriers Association) petitioned the FHWA to adopt an amended rule providing a non-distance-based exemption when a driver meets the following three conditions:

1. The driver reports to and is released from a normal work reporting facility.

2. The driver complies with the daily driving and on-duty time limits set forth in current § 395.3.

3. The motor carrier maintains records of the driver's on-duty status.

The FMCSA addresses the subject of the DLTLCA petition in the above discussions about time records and believes this NPRM incorporates a discussion of this matter.

On August 12, 1999, the FHWA received another petition from the DLTLCA asking the agency to adopt further procedures under 49 CFR 389.25 *Additional rule making proceedings* to allow the participants of this NPRM to review and comment on the safety and fatigue research which the FMCSA gathered and relies upon in this document to propose revising the current HOS rules. Further, the DLTLCA requested that the FHWA implement these procedures before issuing this NPRM. The Office of Motor Carrier Safety denied this petition, notified the

DLTLCA of its decision, and has filed the decision in the docket for review.

Commenters are also requested to provide and justify values for the types of parameters specified in FMCSA's proposal. These parameters, for example, include:

1. The need for and duration of mandatory rest breaks during the daily on-duty period;
2. The number of hours per day and per week that drivers would be allowed to be on-duty, with or without averaging over more than one day or one week;
3. The length and timing of any weekly recovery period; and
4. The allowance for drivers to reset their weekly on-duty total back to zero after any minimum weekly recovery period.

IX. Implementation

The FMCSA is proposing that all motor carriers would continue to have to comply with the current Part 395 until 6 months after publication of the final rule. On that date, all motor carriers would begin complying with most requirements of the final rule. The agency believes this should be sufficient time to make any necessary adjustments to schedules and to familiarize drivers, other motor carrier personnel, and Federal, State, and local enforcement personnel with the details of the new rules.

The requirements for installed and in use EOBRs in Type 1 and Type 2 operations would be mandatory within 2, 3, or 4 years of that date 6 months after publication of the final rule. The deferred mandatory compliance dates for EOBRs in Type 1 and 2 operations are staggered according to the size of the motor carrier on that 6-month effective date: 2 years for carriers with 51 or more power units; 3 years for carriers with 20 to 50 power units; and 4 years for carriers with 20 or fewer power units on the effective date of the rule. The intent of the deferred implementation schedule is to mitigate the start-up costs, particularly for small entities. The agency believes that the more universal the use of these devices, the more likely the price will drop. The analysis of cost is provided elsewhere in this NPRM.

Type 1 and 2 motor carriers and their drivers would continue to use the current part 395 recordkeeping requirements until they purchase, install, and begin using the mandatory EOBRs. If a motor carrier chooses to wait until the applicable date 2 to 4 years in the future to begin using EOBRs, that motor carrier would have to comply with the current § 395.8 RODS or § 395.15 automatic on-board recording device requirements. This should provide an incentive for those motor carriers that would like to take advantage of the various cost savings to do so as soon as they begin using compliant EOBRs.

As discussed above in VII. F. 1., the WHD records in 29 CFR part 516 do not include change of duty status location data that is needed by the FMCSA and its State and local partners in law enforcement to enforce the proposed rules for safety purposes. The FMCSA cannot effectively enforce the proposed safety rules to discover whether drivers are operating CMVs while tired or unalert without locations added. The location of duty status changes is important only for those drivers who do not return to their normal work reporting location at the end of each work shift to determine where duty is occurring and is necessary for enforcement of the rule. For Type 1 and 2 drivers, the FMCSA needs locations of CMV drivers duty status changes either on a WHD-required time record or an EOBR.

The FMCSA believes requiring the continued use of the historical § 395.8 RODS would reduce unnecessary confusion. Requiring a WHD time record with the additional location data on it would create unnecessary confusion and would probably create enforcement problems. First, many motor carrier employers probably have not been creating the WHD time record in the first place. This, of course, is possibly a violation of FLSA requirements. The FMCSA has spoken with numerous driver-employees of non-unionized motor carriers who have no knowledge that they are covered under the FLSA minimum wage requirements. This leads FMCSA to believe that the motor carriers are only requiring the RODS, but are not also creating the WHD time record to calculate the minimum wage required to be paid. Motor carriers would have to create a temporary time record system adding appropriate location data for the 2 to 4 years until they install and begin using EOBRs. Second, motor carriers would have to scrap the temporary system once they do install compliant EOBRs. The FMCSA believes this is too much burden and unnecessary confusion. It expects motor carriers and drivers to understand and have the ability to implement that temporary system to be in compliance and then scrap it. Third, Federal, State, and local law enforcement would have to learn how to interpret each carrier's temporary time record system for roadside enforcement. Delays of freight and passengers would probably result when officers begin asking questions that drivers could not answer. Officers would begin contacting the motor carriers directly for the answers before allowing drivers to proceed. Fourth, drivers, carriers, and officers know the current RODS system and automatic on-board recording system to be able to enforce the rules immediately.

Of course, those motor carriers that have chosen to use current § 395.15 EOBRs may be able to begin using the new recordkeeping rules on the 6-month effective date, depending upon whether their EOBRs are compliant with the final rule (including the proposed requirement to upgrade warning, sensor failure, and edited data requirements).

As an alternative, for Type 1 and 2 drivers operating non-compliant EOBRs, the FMCSA is considering a requirement that motor carriers would implement the proposed daily off-duty limitation, but would delay implementing the proposed on-duty limitations for those Type 1 and 2 drivers. The motor carriers would have to use the proposed off-duty limitation (i.e., 10 hours) each day and record time using RODS until all their CMVs were compliant with the EOBR requirements. Creating another split recordkeeping situation within a carrier's operation would make compliance verification in the field extremely difficult where a driver may drive EOBR-compliant CMVs some of the time and non-compliant CMVs at other times. In particular, this alternative would focus on the proposed 12-hour daily driving limitation and possibly the current weekly 60-hour and 70-hour limitations for on-duty time, because of the difficulty of verifying off-duty times without EOBRs or with the existing RODS. The agency is particularly interested in comments concerning these implementation options.

X. Additional Proceedings

The FMCSA will also hold seven public hearings during the comment period. The hearing locations will be dispersed geographically around the United States. The purpose of these hearings will be to accept oral comments from the public. A notice will be published in the near future with the dates, locations, and other particulars of each hearing.

XI. Section-by-Section Evaluation

A. Conforming Amendments

Changes to other parts of the regulations not contained in the revised parts 394 and 395 are necessary to conform them to the new requirements in this proposal.

1. The first deals with the extent to which State laws and regulations governing the operations of CMVs in intrastate commerce may differ from the FMCSRs without jeopardizing funds authorized under the Motor Carrier Safety Assistance Program.

Section 350.341 What Specific Variances From the FMCSRs Are Allowed for State Laws and Regulations Governing Motor Carriers, CMV Drivers, and CMVs Engaged in Intrastate Commerce and Not Subject to Federal Jurisdiction?

On April 16, 1992 (57 FR 13572, at 13580), the FHWA discussed how section 4002(l) of the Intermodal Surface Transportation Efficiency Act of 1991 required the FHWA to specify tolerance guidelines and standards for ensuring compatibility of intrastate CMV safety laws and regulations with the FMCSRs under the MCSAP. It has always been the FHWA's policy—and now that of the FMCSA—to work toward eventual uniformity of interstate and intrastate laws and regulations under the MCSAP.

This NPRM is based on numerous research studies that have direct applicability to all CMV drivers, regardless of whether the driver operates in interstate or intrastate commerce. The FMCSA believes it should remove any tolerance guidelines that allow intrastate exceptions and exemptions not based on applicable science. As discussed previously in this NPRM, if every CMV driver needs 7 to 8 hours of sleep each night and additional time to attend to personal hygiene, nutrition, and commuting time, 16 hours on duty as MCSAP currently tolerates would not provide those additional opportunities. The 12-hour driving limit would also be removed since that would become the new maximum on-duty limit that includes driving. The agency also believes it must require States to adopt and enforce the weekly off-duty period that includes at least two midnight to 6:00 a.m. periods to be consistent with the research findings above. Therefore, all States would be required to achieve full compatibility for both intrastate and interstate transportation within three years after the effective date of the final rule to this NPRM.

This section would remove the last phrase from the second sentence of paragraph (d) that reads ''nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e), from 100 to 150 miles.'' This would conform the tolerance guidelines to the proposed replacement of the 100 air-mile radius driver with Type 3, 4, or 5 drivers. Paragraph (e) would also be removed.

2. The second conforming amendment relates to the time off required to be taken by a driver before returning from operations excluded from regulation under the ''emergency exception'' provision.

Section 390.23 Relief from Regulations

This section would be amended to increase the minimum off-duty time after emergencies from eight hours to ten hours to conform with the new 10-consecutive-hour minimum in this proposal. It would also replace the current ''24-hour clock reset'' provision with the proposed minimum requirement for two consecutive nights off-duty, including the core sleep periods from midnight to 6:00 a.m., before returning to normal driving subject to the HOS rules. The rules also would require the driver to begin at or after 7:00 a.m. to be consistent with proposed §§ 394.163 and 395.163.

The FMCSA would also make a technical amendment by replacing the term ''Regional Director'' wherever it is found in §§ 390.23 and 390.25 with the term ''State Director.'' The FHWA reorganized its field offices in January 1999 while FMCSA was still a part of the FHWA. The title of ''Regional Director'' no longer exists. This action will formally permit FMCSA State Directors to declare and extend Statewide emergencies under these two sections. For emergencies that are of a regional nature, several State Directors may issue the same exemption.

B. Proposed Hours of Service Parts 394 and 395

The proposed rule would replace the current part 395 with two parts, one directed at the motor carrier and the other, the driver. The numbered section in each part correlates with the same numbered section in the other part, so long as they address the same subject matter. The corresponding sections are combined for purposes of this analysis, and to avoid repetition.

Purposes, Standards, Penalties, and Exemptions

Sections 394.101, 395.101 What Are the Purpose and Standards of This Part?

These sections describe the purpose of the rule. These would immediately and clearly emphasize the need to use well-rested, alert, and attentive drivers by stressing off-duty time, daily and weekly, to ensure drivers have an opportunity to get sufficient, restorative sleep. The lead section in both the motor carrier and driver parts would fix responsibilities to make sure this happens.

These sections also clarify the responsibilities and standards that require sufficient off-duty time daily and weekly to ensure drivers have an opportunity to get sufficient, restorative sleep, and that these responsibilities reside with both drivers and motor carriers. The rule would provide three standards for motor carriers to achieve. It also would have three things a motor carrier should do as additional guiding principles. The advisory items in paragraph (d) have no regulatory effect, but are standards of care to assist motor carriers and drivers to operate CMVs safely. The FMCSA believes it is necessary to establish these guiding principles so that the connection between the rules and their objectives is not lost, and the carriers and drivers are reminded that their responsibility to avoid the risks associated with driving while fatigued is not limited to minimal compliance with prescriptive rules.

Sections 394.103, 395.103 What Must I Do To Enhance Driver Alertness?

These sections describe how motor carriers and drivers should carry out their respective responsibilities to ensure that the drivers are alert and otherwise fit to operate CMVs safely. Drivers and motor carriers would be responsible for ensuring that drivers who have more than one job work no more than 12 or 13 hours depending upon the type of operation they work in. These responsibilities would incorporate the various interpretations provided over the years concerning drivers working for other motor carriers and entities. The FMCSA does not propose to extend this policy to volunteer work or National Guard/Reserve duty, such as drill weekends, or to try to control other types of unpaid activities (*e.g.*, roofing a friend's home, painting the driver's own house), which, realistically, are beyond the agency's enforcement reach. The FMCSA, however, believes drivers and motor carriers must be aware that any type of physical or mental exertion can produce fatigue. Drivers and motor carriers should take into account these other types of fatigue-producing activities when planning their off-duty periods so that they ensure they protect highway safety to the maximum extent possible.

The FMCSA's goal is to ensure CMV drivers are well-rested, alert, and attentive while driving. CMV drivers who work during off-duty periods circumvent the purpose of the regulations, create risks to highway safety, and increase the chances of fatigue-related crashes.

Sections 394.105, 395.105 What Are the Penalties for Failing To Comply With This Part?

These sections describe the penalties for motor carriers and drivers who fail to comply with the requirements of these parts. This provision is placed in the beginning of the parts to advise drivers and motor carriers that failure to meet their responsibilities under the regulations carries severe consequences.

Sections 394.107, 395.107 What Definitions Apply to This Part?

These sections provide definitions that are unique to these parts. They will eventually be included in a part devoted to definitions when the agency completes the zerobase revision of the FMCSRs.

The FMCSA would define an automated time-record system. This would be the equivalent of what is now commonly known as the EOBR, but would allow various technologies that currently exist or may be developed, providing they meet the performance requirements of proposed part 394, subpart C. Allowing new and alternative technologies was the subject of an interpretation published in the **Federal Register** on April 6, 1998 (63 FR 16697), authorizing a pilot demonstration project for monitoring drivers' HOS using GPS technology. The definition would be similar to the definition of automatic on-board recording device currently in § 395.2. The last two sentences of the current definition would be moved to subpart C, since these are actually performance requirements for a system.

The FMCSA would add definitions for the new terms ''off-duty time,'' ''workday,'' and ''workweek,'' modify the definition of the term ''on-duty time,'' and keep the definition of ''driving time'' from the current rule in § 395.2. Consistent with the overall objectives of these parts, the FMCSA is incorporating references to the regulations of the WHD. The definition of ''off-duty time'' would be similar to the WHD's definitions in Application of Principles in 29 CFR 785.16, *Off-duty*, § 785.18 *Rest*, and § 785.19 *Meal*. Similarly, off-duty time would be required to last at least 30 minutes if it is to be counted toward the required accumulation, which is also consistent with WHD's definitions. Any time less than 30 minutes would be considered on-duty time because such short breaks are insufficient to meet the need for restorative rest. This is also similar to the way WHD treats shorter periods for minimum wage purposes.

The FMCSA definition of ''on-duty time'' would be revised to make it consistent with the term ''hours worked'' as explained in the WHD's regulation at 29 CFR 785.7 *Judicial construction*, referencing a series of U.S. Supreme Court cases: *Tennessee Coal, Iron, and Railroad Co.* v. *Muscoda Local No. 123*, 321 U.S. 590 (1944), *Armour & Co.* v. *Wantock, 323 U.S. 126* (1944), *Skidmore* v. *Swift, 323 U.S. 134* (1944), and *Anderson* v. *Mt. Clemens Pottery Co., 328 U.S. 680* (1946).

In consultations between the FMCSA and the WHD, the WHD believes for consistency of rule application, subject motor carrier employers must ensure that: (1) driver-employees must be completely relieved from duty; (2) the period must be long enough for the employee to use the time effectively for the driver's own purposes; and (3) the employee is told explicitly in advance that the driver may leave the job and that the driver will not have to commence work until a definite, specific hour has arrived. The WHD has had recent minimum wage enforcement cases involving motor carrier employers failing to count on-duty waiting time while drivers wait at shipper and receiver locations as hours worked. These definitions and the removal of the duplicative recordkeeping systems should end motor carriers failing to properly count on-duty waiting time of drivers.

The FMCSA would define the terms ''workday'' and ''workweek'' to be compatible with the WHD's definitions of these terms in 29 CFR 516.2(a)(7). The use of common terms and definitions would allow time records created by drivers and by motor carriers to be used to comply with the recordkeeping requirements of both the FMCSA and the WHD. Records currently created for FMCSA compliance purposes use definitions and interpretations created over the years by the ICC, FHWA, and the FMCSA; and they differ somewhat from those used by the WHD. The differences often create confusion for motor carriers and drivers—and for officials from both the FMCSA and the WHD—when it comes to assessing a motor carrier's compliance with FMCSA and WHD regulations.

Two key examples of potential problem areas are the recording of duty time to determine a motor carrier's compliance with the minimum-wage provisions of the Fair Labor Standards Act, and a motor carrier's use of a WHD time card to verify drivers' entries on their records of duty status entries. Comparing separate records using the two different sets of definitions may make it appear the driver has a false RODS under current part 395. In fact, both sets of records may be accurate and correct for their respective purposes. The FMCSA's regulations and regulatory guidance have allowed drivers to record some periods of time during the workday as off-duty time. However, the WHD requires the motor carrier to record the same period as time ''worked'' and to compensate the driver for that time.

In summary, the definitions the FMCSA proposes to revise in this section would make the FMCSA's ''on-duty time'' the equivalent of WHD-required ''paid work.'' The FMCSA would also revise its conditions necessary for determining ''off-duty'' time so they would correspond to the WHD's definition. This change should fix the problems described above, reduce the need for regulatory interpretation by tying into an established body of WHD interpretations, and provide clear guidelines for motor carriers and the FMCSA to make accurate determinations of how many hours off-duty the driver had prior to beginning work.

Sections 394.109, 395.109 What Types of Operations Are Exempt From the Requirements of This Part?

These sections would only cover the agricultural operations exempted by Congress from hour limits under the NHS Act. The NHS Act exempted drivers transporting agricultural commodities and farm suppliers from the maximum driving time, maximum duty time, and minimum off-duty time limit provisions of the FMCSRs. This provision covers only transportation of agricultural commodities or farm supplies for agricultural purposes, and is limited to an area within a 100 air-mile radius from the source of the commodities or the distribution point for the farm supplies. It must take place only during the planting and harvesting seasons in each State, as determined by that State.

The FMCSA interprets the NHS Act provision to exempt this class of carriers and drivers from HOS restrictions in the present part 395, but does not exempt them from the general responsibilities that ensure drivers obtain sufficient restorative sleep and that prohibit ill and drowsy, tired, or inattentive drivers from continued driving. Consequently, a note is provided in subsection (b) to that effect.

Paragraph (c) of this section would provide a new requirement for those drivers who have been working under the exemption regarding when they may

begin or resume services not subject to the exemption. The FMCSA has patterned this requirement after the declared emergency exemption and would allow drivers needing immediate rest to obtain such rest. The motor carrier would be required to provide at least ten consecutive, uninterrupted hours off duty, including the core sleep period from midnight to 6:00 a.m., before requiring the driver to perform non-exempt driving duties. This would allow the driver to obtain at least one night's sleep to be fit and safe for the next workday subject to this proposal. If the driver has been in exempt transportation service for more than five consecutive days, the proposed rule would require the driver be provided a continuous off-duty period that includes two consecutive midnight to 6:00 a.m. periods. The driver could return to service at 7:00 a.m. like all other drivers required to take a ''weekend'' off duty as required by proposed § 394.163. The FMCSA believes the regulations have to allow the driver a period of sleep time necessary to restore any sleep debt the driver may have accumulated while providing the exempt transportation services.

Paragraph (d) proposes definitions limited to this section only, i.e., the terms ''agricultural commodities,'' ''farm supplies,'' and ''source of the commodities.'' The NHS Act did not provide definitions for these terms, and the terms have sometimes been confusing to the public and enforcement officials. These narrowly defined terms should limit the exemption to those drivers and motor carriers that are farmers having field crops and those suppliers that provide farm supplies directly to farmers.

Paragraph (e) provides clarification that this exemption does not preempt other Federal and State laws or regulations. The exemption does not exempt a motor carrier from the FLSA. States are also free to restrict agricultural operations to applicable HOS regulations.

Implementation Schedule

Sections 394.111, 395.111 When Must I Begin To Comply With the Rules in This Part?

These sections would require the new hourly limits to begin immediately on the effective date of the final rule, 180 days after publication in the **Federal Register**. All motor carrier operations engaged in interstate commerce must begin complying with the new hours of rest and service requirements at that time of the effective date of the final rule; however, the agency is proposing that the requirements for use of EOBRs by Type 1 and 2 operations be phased in over a period of 4 years after the effective date of the final rule. The largest motor carriers, i.e., those with more than 50 power units, would have to be in full compliance within two years after the effective date; the medium range, those with 20 to 50 power units, would have to reach full compliance within 3 years; and the small carriers, i.e., those with fewer than 20 power units, could take 4 years to come into full compliance. The proposal defines full compliance as (1) having fully operational automated time record systems meeting the proposed requirements installed, (2) the drivers properly trained in their use, and (3) a systematic monitoring program in place and operational.

Until any Type 1 and 2 carrier complies with the EOBR requirements, that carrier must comply with the recordkeeping rules that were in effect immediately before the effective date of the final rule. That means that motor carriers in Type 1 and Type 2 operations that do not have compliant EOBRs must comply with the presently existing requirements for daily records of duty status in § 395.8 or § 395.15 automatic on-board recording devices.

These transitional rules, i.e., the existing § 395.8, will be set forth in the codified CFR as published by the Government Printing Office in smaller type after an explanatory note of the effective date of the new rules.

Types of Operations

Sections 394.121, 395.121 Are There Different Rules For Different Types of Operations?

These sections specify five different types of motor carrier operations. For each type of operation, the regulations would require specific off-duty periods during each workday and each workweek. The FMCSA believes each type of operation has characteristics that reflect a different level of daily management contact that corresponds to more or less control or supervision over the driver. The ability of management to assess the alertness and attentiveness of the driver is different in each type of operation. As will be seen in later sections, the proposed regulations would specify different off-duty, driving, and on-duty periods for each type of operation, depending on the fatigue-related crash history, amount of driving, and the relative opportunity for direct control or verifiability of the driver's adherence with rest period requirements.

In Type 1 operations motor carriers generally have less daily management control over drivers than in any other type of operation, although, because of unique systems, some individual motor carriers may exercise more control than others. These drivers spend most of their working time behind the wheel, operate at all hours of the day and night under a wide variety of conditions, and are usually most lacking in off-duty time for regular restorative sleep. Motor carrier management should monitor these drivers more closely as they have a higher crash risk, as discussed earlier in this NPRM in the ''Safety Problem'' and ''Benefits'' sections. Because of the remoteness of their working locations, however, these drivers generally do not have much daily direct contact with management. Based on the scientific and experiential evidence, the FMCSA believes EOBRs are the best way to improve monitoring and ensure that drivers follow the rules. While the new, prescribed work/rest hours should go a long way toward improving the drivers' ability to obtain needed sleep, that objective is only attainable if the rules are followed.

These motor carriers would have to ensure these devices and their associated equipment, software, and, if the motor carrier chooses, satellite monitoring systems have been properly installed. In addition, motor carriers would need to ensure the devices, systems, and software are maintained according to the manufacturer's directions, as well as train drivers and staff to use them. The costs are somewhat mitigated by the growing inclination toward investment in electronic and other automated systems that can be adapted to perform the functions of the EOBRs. The agency believes the costs would be justified by improved regulatory compliance and reduced crashes.

Type 1 carriers and drivers would be able to use a flexible schedule allowing an extra day of work in the first of two workweeks, take a short ''weekend,'' and then conclude a shorter second workweek with an extended ''weekend'' at home or other location. This 2-week flexible alternative to the standard workweek could be used to alleviate the stress and other pressures caused by compliance with the present 60- and 70-hour limitations. Drivers often complain that they ''run out of hours'' at remote locations and are faced with the choice of taking a long stressful off-duty period, or breaking the rules. Many admit they often choose to break the rules in those circumstances. Rather than being forced to take long breaks at remote, inconvenient locations, these drivers

could begin a return trip sooner or take a longer break at locations more conducive to regular, restorative sleep.

Type 2 operations are similar to those of Type 1 except that the drivers are away from their home base three or fewer days at a time and thus are able to sleep more often in a familiar home or other desirable environment.

As described in the rule development sections, drivers in Type 3 operations also spend most of their on-duty time driving, but their driving patterns are different from the Type 1 and Type 2 drivers. They are generally local or home-based, and their driving periods are split into two parts, most often separated by several hours.

Drivers in Type 4 operations work in the geographic vicinity of their normal work reporting location. They are generally on regular schedules, and they are not on duty more than 12 consecutive hours from the time they report in until the time they are released. Driving is a significant part of their work (more than one-third of their on-duty hours). Establishing this category eliminates the need for the several existing exemptions, including the *100 air-mile radius* exception currently found in 49 CFR 395.1(e).

Drivers in Type 5 operations also work in the vicinity of their home or normal work reporting location. The difference between a Type 4 and 5 operation is that in the latter category, driving is usually incidental to the primary occupation of the drivers. Type 5 drivers spend less than one-third of their on-duty hours behind the steering wheel. Type 5 operations might include utility workers such as electrical, water, natural gas, or communications lines specialists; construction equipment operators; environmental mitigation specialists; oilfield service workers; ground water well drilling workers; operators of mobile medical equipment providing community patient services; and driver-salespeople. Establishing this category eliminates the need for an array of exemptions for these specialized operations.

Sections 394.123, 395.123 How do I determine Which Requirements Apply to my Operations?

These sections would make it clear to the motor carriers and drivers that they must comply with the rules applicable to the type of operation that best describes their own. The actual facts and circumstances at the time compliance is required would determine the appropriate category, but carriers and drivers would not be liable to penalty if they are complying in good faith with requirements applicable to a type of operation they reasonably believed included their own.

Sections 394.125, 395.125 May I Assign my Drivers to More Than One Type Operation Within a Workweek?

These sections provide flexibility for drivers and motor carriers to switch between types of operations after the drivers have accrued an appropriate amount of off-duty time. For example, if drivers who have been working in a Type 5 operation for a workweek have to be switched to a Type 4 operation, they could do that after taking an off-duty period that includes two consecutive midnight to 6:00 a.m. periods.

Fatigued Drivers

Sections 394.131, 395.131 What must I do if my driver becomes impaired by fatigue or illness?

These sections would require drivers to cease driving when their ability is impaired due to illness or fatigue. These sections parallel the prohibition contained in the current 49 CFR 392.3, and we have added the prohibition that motor carriers must not retaliate, penalize, discipline, dismiss, or otherwise discriminate against drivers who exercise their obligations to stop driving. Drivers would report violations of this section to the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), as required by 49 U.S.C. 31105 and OSHA's implementing regulations at 29 CFR part 1978 *Rules for Implementing Section 405 of the Surface Transportation Assistance Act of 1982 (STAA).*

The OSHA has procedures implementing the statutory provisions for the handling of complaints of discrimination made by drivers, or persons acting on their behalf. The rules, together with those set forth at 29 CFR part 18, specify the procedures for submission of complaints under 49 U.S.C. 31105, investigations, issuance of findings and preliminary orders, objections, litigation before administrative law judges, post-hearing administrative review, withdrawals and settlements, judicial review and enforcement, and deferral to other forums.

Generally, after considering all the relevant information collected during an investigation, OSHA will issue, within 60 days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the motor carrier or others have discriminated against the driver in violation of 49 U.S.C. 31105. If OSHA concludes that there is reasonable cause to believe that a violation has occurred, it will accompany its findings with a preliminary order providing for relief and will include, where appropriate, a requirement that the motor carrier abate the violation; reinstate the driver to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the driver's employment; and payment of compensatory damages. At the driver's request the order may also assess the motor carrier for the driver's costs and expenses (including attorney's fees) reasonably incurred in pursuing the complaint.

Daily Time

Sections 394.141, 395.141 How Many Consecutive Hours Must my Drivers Remain Off-Duty Before Beginning Each Workday?

These sections specify the minimum number of consecutive hours drivers in each type of operation must have off to obtain restorative sleep. Only Type 1 team drivers would be allowed to split their off-duty time into two sleeper berth periods. This would allow one member of the team to continue to drive while the other sleeps in the berth. Solo drivers would be prohibited from splitting their sleep period. The Expert Panel recommended that until there is more definitive information available on the relative quality of sleeper berth sleep, drivers using sleeper berths should be allowed greater opportunity to obtain additional rest. The panel found that:

> Rest or sleep acquired in a sleeper berth is not equivalent to rest or sleep in a bed (Mackie and Miller, 1978; Williamson *et al.*, 1992; Neale et al., 1998). Hertz (1988) reported that drivers using sleeper berths had a higher crash risk than drivers obtaining sleep in a bed. Mackie and Miller (1978) found that drivers using sleeper berths showed earlier signs of performance decrement and earlier signs of fatigue, compared to drivers sleeping in a bed. The circumstances surrounding sleeper berth use, *e.g.*, typically, split sleep periods, vehicle motion, highway and/or truck stop noise, and other conditions associated with sleeper berth use, are disruptive of restorative sleep. It is assumed, but not documented, that sleep acquired in a sleeper berth while the vehicle is in motion (i.e., while another driver is driving) is not so restorative as sleeper berth sleep in a stationary vehicle. However, both have been reported to be less restful. Single drivers who use a sleeper berth report that they are not able to sleep well because of concerns for their personal safety (Neale et al., 1998)
>
> Team drivers, like other drivers, must be limited to 12 hours on duty during any 24-hour period, with 12 hours off duty. The off-duty time should include an uninterrupted time period of at least 7 hours to allow for

6 hours of continuous sleep, with another period of at least 2 hours for sleep. There should also be another 3 hours for other activities.

Although the Panel was not able to quantify the difference between sleeper berth sleep and sleep acquired in the home, there must be recognition of the difference in quality of sleep in a sleeper berth compared to sleep acquired under more normal circumstances. The practical and economic limitations on sleeper berth use restrictions are acknowledged by the Panel.

The FMCSA is proposing to increase the current minimum sleeper-berth period (2 hours) to five hours to provide the drivers a better opportunity to obtain restorative sleep. To obtain the minimum 10 hours off duty for drivers in type 1 operations under this proposal, team drivers must split their time into two periods of at least 5 hours each. Of course, these drivers could also each sleep 10 consecutive hours in the sleeper berth while the CMV is moving, though the driving member would be limited by the additional 2-hour rest, nap, and meal breaks and the on-duty time limitations.

Although the NTSB and others recommend the removal of the sleeper berth exception, the FMCSA believes such a decision would be premature. The marine industry, for example, has an international treaty requirement for 10 hours of rest daily, which may be broken into two periods where one must be at least 6 consecutive hours. This is similar to the sleeper berth practice that has evolved in the trucking industry. The FMCSA does not believe the evidence in support of those recommendations is sufficient to warrant that step. The FMCSA has a research study underway on sleeper-berth use and the quality and quantity of restorative sleep drivers obtain in these berths while the CMV is traveling on the road at highway speeds. The agency's position will be reevaluated when the results of the study are available.

Sections 394.143, 395.143 What Are the Consequences of Interrupting a Driver's Minimum Consecutive Off-Duty Hours?

These sections would provide that motor carriers that interrupt a driver's off-duty period would have to ''restart the clock'' with respect to that driver's consecutive off-duty time. This provision would also apply to team drivers using the sleeper berth exception so that motor carriers cannot disturb the sleeping driver.

Drivers frequently complain that motor carriers call them at any hour of the day and night, frequently interrupting their sleep. Bonnet (1994) notes that the continuity of sleep is integral to its quality: ''Evidence has begun to demonstrate that sleep is a time-based cumulative process, and that frequent awakenings can slow or stop that process . . .'' Bonnet's research shows that drivers who are awakened during their principal sleep period are more likely to have reduced alertness.

The WHD regulations at 29 CFR § 785.22 *Duty of 24 hours or more* also address interruptions of sleep in paragraph (b) of that section, stating that if the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the WHD divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. (See Eustice v. Federal Cartridge Corp., 66 F. Supp. 55 (D. Minn. 1946).) These sections therefore make it very costly for motor carriers to interrupt drivers' off-duty hours.

Sections 394.145, 395.145 Must I Allow My Drivers Additional Off-Duty Time After They Begin Work?

These sections would require motor carriers to provide time for Types 1, 2, and 5 drivers to take at least two off-duty hours each workday to rest and nap, at the driver's discretion. The 2-hour period could also be used to meet personal necessities or to perform personal errands.

The driver may use the additional off-duty time during the driving shift or at the end of the workday. The FMCSA believes most drivers would use the time throughout the day to stop at truck stops and other rest areas for meals, naps and breaks, and to contact their families. These sections would also allow drivers to take rest breaks, including naps, while at the driving controls of the motor vehicle as long as it is properly parked and secured.

Sections 394.147, 395.147 How Long May Drivers Be on Duty?

These sections set forth maximum amounts of on-duty time for drivers in each of the five types of operations. The general on-duty limit is 12 hours per day, or 13 in the case of Type 5 drivers. Drivers in Type 3 and 4 operations would usually drive considerably less than 12 hours in any duty period, because of the amount of non-driving work typically required in these types of operations. Drivers in Type 3 operations also would be off duty at least 3 hours in between the two on-duty periods.

Sections 394.149, 395.149 How Long May Drivers Drive Motor Vehicles?

These sections set forth maximum amounts of driving time for drivers in each of the five types of operations. The general driving limit is the same as the on-duty time, i.e., 12 hours per workday, or, in the case of Type 5 drivers, 5 hours. The FMCSA defined a Type 5 driver to be one who drives CMVs only incidental to primary work responsibilities, e.g., repairman, salesman, carpenter, plumber, etc. In addition, the rule would limit the drivers' exposure to increased highway safety risks that could result from conceivably driving a CMV in the 14th to 15th consecutive hour after beginning work. Since the research indicates increased safety risks after 12 hours on duty in almost every occupation, the FMCSA believes that allowing drivers who primarily do work other than driving should be limited in their driving tasks to protect the public.

Weekly Time

Sections 394.161, 395.161 How Many Consecutive Off-Duty Hours Per Workweek Must I Give My Drivers?

These sections describe the ''weekend'' requirement. These minimum off-duty periods were designed to afford the drivers the opportunity for restorative sleep based on the amount of driving and other work they perform. The ''weekend'' may be longer depending on when the motor carrier releases the driver from duty on the last workday of the workweek. The rules would allow drivers to take as few as 32 consecutive hours off duty on a ''weekend,'' provided the time period includes two consecutive midnight to 6:00 a.m. periods to obtain restorative sleep and the driver is released from work at exactly 11:00 p.m. on the last workday of the workweek.

As the ICC found in 1937,

[A]llowance must be made for eating, dressing, getting to and from work, and the enjoyment of the ordinary recreations'' (3 M.C.C. 665, at 673). Logically, a driver cannot get full advantage of the minimum two consecutive midnight to 6:00 a.m. sleep periods if he/she is released at or just before midnight, and required to return to work at or just after 6:00 a.m. The FMCSA has chosen 11:00 p.m. as the latest time drivers could get off work and still get to sleep for the first full midnight to 6:00 a.m. period on the first night of a ''weekend.'' Likewise, the agency has chosen 7:00 a.m. as the earliest time drivers could start a new workweek and still sleep the last full midnight to 6:00 a.m. period on the last night of a ''weekend.''

Generally, drivers would be off duty for more than the minimum 32 consecutive hours, but fewer than the 64

consecutive hours in a ''normal weekend'' (4:00 p.m. Friday to 8:00 a.m. Monday). A driver completing a workweek at 11:00 p.m., for example, could take only the minimum 32 hours before beginning the next workweek. A driver completing a workweek at 11:10 p.m., though, would have to be off duty for at least 55 hours, 50 minutes before beginning the next workweek since the driver was released after 11:00 p.m. and would not have the full ''allowance . . . for eating, dressing, getting to and from work, and the enjoyment of the ordinary recreations.''

The FMCSA is not suggesting that motor carriers provide only 32 hours that include the two consecutive midnight to 6:00 a.m. periods, or up to 55 hours 59 minutes off duty at the end of a workweek. The off-duty period that includes two consecutive midnight to 6:00 a.m. periods is only a minimum. The ICC made the mistake of assuming motor carriers would not ''believe that the maximums herein prescribed will become either the minimum or the standard of hours' (3 M.C.C. 665, at 686). The FMCSA expects motor carriers to provide, and drivers to take, as much time as necessary to recover from any sleep debts and other conditions resulting from cumulative weekly fatigue.

The rules would allow Type 1 drivers the option to take a short ''weekend'' at the end of one extended on-duty workweek and a long ''weekend'' at the end of the second reduced on-duty workweek. For example, a driver could take the minimum 32 consecutive hours off duty at the end of the first workweek, if released from duty at exactly 11:00 p.m. The driver could work during this workweek for up to 72 hours. The second consecutive workweek, though, would average the off-duty and on-duty time periods over the two workweeks. This would require the driver to only work for up to 48 hours during the second workweek and take at least 80 consecutive hours off duty at the end of the second workweek, thus producing an average of 60 or fewer hours on duty per workweek and at least 56 hours off-duty hours per ''weekend.''

The FMCSA believes that the 1962 oilfield exception and the 1995 NHS Act exemptions for utility and construction motor carrier operations, allowing a restart of the cumulative duty period after 24 hours off duty, are inconsistent with the modern understanding of fatigue and should be modified. Therefore, the proposed rule would require those drivers to obtain at least two consecutive midnight to 6:00 a.m. periods, which could be as few as 32 consecutive hours off duty. This would allow those drivers to get the restorative sleep the research suggests they need to ensure their own safety and that of others who also use the highways. It would also accommodate the needs of those industries presently using the 24-hour restart provision. In practice, the 24-hour period translates into a full day off, meaning two sleep periods. Those exemptions would henceforth be subject to the weekend requirements of these sections.

The FMCSA is proposing to provide a specific exception for the groundwater well drilling industry. Paragraph (c) of § 345 of the NHS Act (109 Stat. 613) provided a specific prohibition that prohibits this NPRM and any other NPRM from determining whether granting the groundwater well drilling exception is not in the public interest and would have a significant adverse impact on the safety of CMVs. The FMCSA cannot propose to modify the 24-hour restart exception for this industry segment, even though it is inconsistent with the modern understanding of fatigue.

Sections 394.163, 395.163 When May My Drivers Start Working After Being Off Duty at the End of a Workweek?

This is a table showing the time of day a driver may begin a new workweek after taking the required 32 or more consecutive hours off duty. The starting times for the new workweek are calculated based upon the particular time of day the driver was released from duty at the end of the previous workweek. As was discussed in the section above headed *§§ 394.161, 395.161 How many consecutive off-duty hours per workweek must I give my drivers?*, the FMCSA has determined that the driver must be provided an off-duty period long enough to obtain at least two consecutive core sleep periods including the hours between midnight and 6:00 a.m. for the purpose of obtaining restorative sleep in each of the two nights needed and an additional ''allowance . . . for eating, dressing, getting to and from work, and the enjoyment of the ordinary recreations'' at the beginning and end of each such period.

Sections 394.165, 395.165 How Many Hours per Week May My Drivers Work?

These sections would limit on-duty time up to 60 hours in a workweek for Types 1, 2, 3, and 4 drivers and 78 hours for Type 5 drivers. This would basically allow each type of driver to work their maximum daily limit and accumulate their maximum total within a 5- or 6-consecutive-day period, depending on the exact time the driver begins duty and is released from duty each workweek.

Motor carriers and drivers involved in nighttime operations would only be able to fit a 5-full-day schedule into the limits proposed in this NPRM. These daily and weekly limitations together should compensate the drivers for any accumulated sleep debt, especially for drivers who operate CMVs consistently between midnight and 6:00 a.m. For example, generally, Type 2 less-than-truckload drivers are the greatest proportion of all drivers who operate CMVs consistently between midnight and 6:00 a.m. See the discussion above under VII. I. 5. Qualitative Impacts, Weekly Scheduling. Table 20 shows a typical Type 2 less-than-truckload driver's off-duty and on-duty daily cycles and the off-duty and on-duty hours the driver would accumulate throughout a typical workweek. The table shows that the requirement for a minimum ''weekend'' off-duty period consisting of two midnight to 6:00 a.m. periods, the daily off-duty minimum requirement, the daily on-duty maximum limit, and a regular workweek start time at 9:00 p.m. would only allow the driver to work, including driving, for up to 60 hours in a workweek. Note the driver accumulates the time between Monday night and Saturday morning.

TABLE 20—TYPICAL TYPE 2 DRIVER'S WORKWEEK

[Allowed to be on duty up to 12 hours and required to be off duty at least 12 hours daily. Motor carrier assigns driver to begin work at 9:00 p.m. on Monday]

Description	Time of day when occurs	Cumulative on-duty time	Cumulative off-duty time
Workweek begins for a typical Type 2 driver	9:00 p.m. Monday	0	0
12 hours on duty and took 2 additional hours off duty for rest and meal breaks.	9:00 p.m. Monday to 11:00 a.m. Tuesday.	12	2
Minimum 10 consecutive hours off duty	11:00 a.m. Tuesday to 9:00 p.m. Tuesday.	12	12
12 hours on duty and took 2 additional hours off duty	9:00 p.m. Tuesday to 11:00 a.m. Wednesday.	24	14
Minimum 10 consecutive hours off duty	11:00 a.m. Wednesday to 9:00 p.m. Wednesday.	24	24
12 hours on duty and took 2 additional hours off duty	9:00 p.m. Wednesday to 11:00 a.m. Thursday.	36	28
Minimum 10 consecutive hours off duty	11:00 a.m. Thursday to 9:00 p.m. Thursday.	36	36
12 hours on duty and took 2 additional hours off duty	9:00 p.m. Thursday to 11:00 a.m. Friday.	48	38
Minimum 10 consecutive hours off duty	11:00 a.m. Friday to 9:00 p.m. Friday.	48	48
12 hours on duty and took 2 additional hours off duty and begins ''weekend''.	9:00 p.m. Friday to 11:00 a.m. Saturday.	60	50
Off-duty time has now consisted of two consecutive midnight to 6:00 a.m. periods.	11:00 a.m. Saturday to 7:00 a.m. Monday.	60	94
End of typical workweek	9:00 p.m. Monday	60	108

Type 5 drivers, of course, have limited exposure on the highways because of the nature of their work. To emphasize the uniqueness of this category, the proposal limits driving time to a maximum of 5 hours per day. These drivers have one of the lowest estimated fatigue-related crash rates the agency found for the last five-year period for which data were available. Type 5 drivers are subject to a ''weekend'' requirement that includes two consecutive midnight to 6:00 a.m. periods that the research indicates are necessary to overcome any sleep debt accumulated during the previous 5 to 6 consecutive days of work. Thus, these drivers would be required to take the minimum 32 to 56 consecutive hours off duty like all other drivers. The FMCSA believes these factors compensate for allowing Type 5 drivers to work one extra hour per day and one extra day per week up to 78 hours in a workweek.

Table 21, similar to table 20, shows a typical driver-salesperson's, utility service CMV driver's, or other Type 5 driver's off-duty and on-duty daily cycles and the off-duty and on-duty hours these drivers would accumulate throughout a typical workweek. Table 21, like table 20, shows that the requirement for a minimum ''weekend'' off-duty period consisting of two midnight to 6:00 a.m. periods, the daily off-duty minimum requirement, the daily on-duty maximum limit, and a regular workweek start time at 7:00 a.m. would only allow the driver to work, including driving, for the Type 5 driver's applicable 78 hours in a workweek. Note the driver accumulates the time between Monday morning and Saturday evening.

TABLE 21—TYPICAL TYPE 5 DRIVER'S WORKWEEK

[Allowed to be on duty up to 13 hours and required to be off duty at least 11 hours daily. Motor carrier assigns driver to begin work at 7:00 a.m. on Monday.]

Description	Time of day when occurs	Cumulative on-duty time	Cumulative off-duty time
Workweek begins for a typical Type 5 driver	7:00 a.m. Monday	0	0
13 hours on duty and took 2 additional hours off duty for rest and meal breaks.	7:00 a.m. Monday to 10:00 p.m. Monday.	13	2
Minimum 9 consecutive hours off duty	10:00 p.m. Monday to 7:00 a.m. Tuesday.	13	11
13 hours on duty and took 2 additional hours off duty	7:00 a.m. Tuesday to 10:00 p.m. Tuesday.	26	13
Minimum 9 consecutive hours off duty	10:00 p.m. Tuesday to 7:00 a.m. Wednesday.	26	22
13 hours on duty and took 2 additional hours off duty	7:00 a.m. Wednesday to 10:00 p.m. Wednesday.	39	24
Minimum 9 consecutive hours off duty	10:00 p.m. Wednesday to 7:00 a.m. Thursday.	39	33
13 hours on duty and took 2 additional hours off duty	7:00 a.m. Thursday to 10:00 p.m. Thursday.	52	35
Minimum 9 consecutive hours off duty	10:00 p.m. Thursday to 7:00 a.m. Friday.	52	44
13 hours on duty and took 2 additional hours off duty	7:00 a.m. Friday to 10:00 p.m. Friday.	65	46

TABLE 21—TYPICAL TYPE 5 DRIVER'S WORKWEEK—Continued

[Allowed to be on duty up to 13 hours and required to be off duty at least 11 hours daily. Motor carrier assigns driver to begin work at 7:00 a.m. on Monday.]

Description	Time of day when occurs	Cumulative on-duty time	Cumulative off-duty time
Minimum 9 consecutive hours off duty	10:00 p.m. Friday to 7:00 a.m. Saturday.	65	55
13 hours on duty and took 2 additional hours off duty and begins ''weekend''.	7:00 a.m. Saturday to 10:00 p.m. Saturday.	78	57
Off-duty time has now consisted of two consecutive midnight to 6:00 a.m. periods and end of typical workweek.	10:00 p.m. Saturday to 7:00 a.m. Monday.	78	90

Summary of Hours Limits

Sections 394.167, 395.167 Can These Requirements Be Summarized in a Chart?

The preceding sections would be summarized in a chart for easier understanding and to make clear the differences between the limits for drivers in each type of operation.

A week consists of 168 consecutive hours. If a Type 1 driver starts at 7:00 a.m. Monday and works 12 hours over a 14-consecutive-hour period for each of five work days, the driver would get off duty at 9:00 p.m. Friday and have to have a minimum of 34 consecutive hours off duty for the ''weekend.'' The rules would allow flexible start times during the workweek, but §§ 394.163 and 395.163 would require the driver to be off duty by 11:00 p.m. Saturday in order to have a consistent start time for the following Monday morning. Otherwise, the driver may not begin work for the following workweek until 7:00 a.m. Tuesday.

Loading and Unloading Practices

Sections 394.169, 395.169 What Are the Loading and Unloading Responsibilities of Drivers?

These sections would require the motor carrier to advise its drivers about who is responsible for loading and unloading services. The services of loading and unloading cargo by laborers are known in the motor carrier industry as ''lumping.'' The Motor Carrier Act of 1980, Public Law 96–296, July 1, 1980, which addressed the issue of lumping, prohibits extortion and coercion to load and unload trucks (49 U.S.C. 14103). Also see H. Rpt. 96–1069, 96th Cong., 2nd Sess., June 3, 1980, pages 30 and 31, about the intent of Congress with respect to loading and unloading trucks.

The proposed provisions are intended to answer the frequent complaints the FHWA had received, and the FMCSA now receives, from drivers of for-hire motor carriers about lumping and other pressures on drivers to perform unexpected and unscheduled loading and unloading operations. Lessors' drivers (owner-operators, independent contractors, employees, and others) often are not informed about who is responsible for loading and unloading services. It is often the lessor's drivers who are responsible for loading and unloading cargo as a part of the lease contract. The lessee (motor carrier) or lessor often fails to inform the driver of such responsibilities or the driver was informed at one time but fails to remember the information.

The FMCSA requires certain for-hire motor carriers to place specific items in every written lease. A lease is defined in 49 CFR 376.2(e) as a ''contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.'' Section 376.12(e) requires motor carriers executing written leases to ''clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for the service.''

The FMCSA believes that motor carriers must do a better job of communicating to all their drivers their policies regarding loading and unloading services; providing for loading and unloading in their contracts with shippers, receivers, or brokers; and enforcing those provisions when the loading and unloading occurs.

Many drivers often confuse lumping with specific requirements to sort or segregate deliveries in receiver-demanded configurations or patterns, including re-palletizing, and restrictions on using loading docks, pallet jacks, fork lifts, or other package handling equipment. These services are not generally considered lumping. These services do, however, lead to unanticipated delays and extend the driver's workday. Motor carriers should clarify these issues for all drivers before trips are scheduled so that sufficient time and energy may be reserved to avoid unforeseen fatigue-causing delays or exertions.

This section specifies that a driver's time performing loading and unloading services is on-duty time for purposes of this proposed rule.

Since a disclosure to a third party is considered a collection of information under 5 CFR 1320.3(c), the FMCSA is requesting the OMB to assign this information collection requirement the number 2126–0001.

Subpart B—Records and Reports

Time Records To Be Prepared and Kept By Motor Carriers/Drivers

Sections 394.201, 395.201 What Records Must I Create Showing That My Drivers Comply With the Off-Duty and On-Duty Requirements?

Motor carriers must require drivers in Type 1 or 2 operations to use, operate, and accurately record time in EOBR automated time record systems; and the drivers must carry those records on CMVs. This is not a requirement for drivers in Types 3, 4, or 5 operations, though EOBRs would be allowed for them. The rationale for not requiring EOBRs for Types 3, 4, and 5 drivers follows the rationale for the current 49 CFR 395.1(e), except that the requirement that the driver operate within a 100 air-mile radius of the normal work reporting location and be released within 12 consecutive hours, is modified to include only the 12-hour-release provision.

The current § 395.1(e) has its roots dating back to 1940. On May 29, 1940, the American Transit Association filed a petition ''so as to relieve drivers engaged in certain types of operations from the requirement to prepare a daily'' record of duty status. In 24 MCC 413, at 414, July 30, 1940, the ICC stated it:

> appreciate[s] that it is difficult and burdensome for a driver of such a vehicle to note accurately the many stops made and the times of such stops. It frequently happens that in the course of the day such a motor vehicle will cross and recross a State line many times, and it is likewise burdensome to require the driver to note the time of such crossing.

Our purpose in requiring the maintenance of a driver's log was twofold. We desired a standardized type of record to be maintained of the daily driving time and the weekly hours on duty which would be in the possession of each driver and which would enable a highway patrolman or other enforcement officer to determine immediately upon the stopping of a vehicle whether the driver had been on duty or was driving in violation of our regulations. We recognize that highway patrolmen and other enforcement officers seldom stop passenger busses operating wholly in urban and suburban areas such as those under discussion here. Our other purpose in requiring the maintenance of a driver's log was to provide a record from which our field representatives could readily determine whether or not the carriers are complying with the regulations. Because of the records other than the log maintained by the carriers engaged in this type of transportation and because, as stated, highway patrolmen and other enforcement officers rarely stop busses operating in urban and suburban territories, the maintenance of a driver's log is not necessary for the purposes which we had in mind.

The ICC alluded to ''the records other than the log maintained by the carriers.'' The FMCSA believes that one could deduce that the ICC was writing about the WHD time records. The WHD published on October 22, 1938 (3 FR 2533), and made effective on the date of publication, the requirements in 29 CFR part 516 for employers, including motor carriers, to record information for the FLSA's Section 11. The original exemption had a limit of 35 miles from the garage or terminal and the carrier had to maintain records showing the total number of hours of driving per day, the total number of hours on duty per day, and the total number of hours on duty per week of each driver.

In 54 MCC 337, at 356 (April 14, 1952), the ICC expanded the distance limit to a 50-mile radius and placed a further condition that no such driver taking the exception remains on duty for more than 12 hours in any period of 24 consecutive hours, though the agency did not explain the rationale for the added condition.

On October 13, 1977 (42 FR 55109), the FHWA proposed expanding the distance limit to a 100-mile radius because of the numerous changes affecting pickup-and-delivery operations that had occurred. Among the obvious changes cited were: The improvement and increase in the number of limited access highways; improved highway designs; the expansion of most metropolitan areas; and improved truck and bus designs. The proposal also stated that ''in order to insure the removal of fatigued drivers from highly congested city highways without restricting economy of operations, a limitation of a 12 consecutive hour work period is being proposed.''

The details of the recordkeeping requirements for Type 3, 4, and 5 drivers would be similar to the WHD regulation at 29 CFR 516.1(a). Motor carriers would be allowed to use any forms or records so long as the forms or records contain the necessary information.

As discussed previously, the FMCSA intends to use recordkeeping requirements as close as practical to those used by the WHD under 29 CFR 516.2(a)(1), (2), (5), and (7), and § 516.6(a)(1) to avoid duplication. These proposed regulations would be used by all motor carriers, including motor carriers employing owner-operator drivers and independent contractors, not just driver-employees. The FMCSA, like the WHD, would not prohibit motor carriers from requiring Type 3, 4, and 5 drivers to prepare these records for the motor carriers. Motor carriers would be responsible for ensuring the records are produced, that the records are accurate, and that they are made available for inspection by authorized FMCSA and State and local enforcement officials.

All motor carriers and drivers would be required to complete records only for workdays drivers perform any on-duty function. Motor carriers would be responsible for ensuring drivers who work for non-motor carrier employers do not exceed the on-duty limits and have at least the required off-duty hours prior to reporting for duty to drive CMVs. The records of full off-duty days for any type of driver would not have to be prepared by any driver or motor carrier, except at the discretion of the motor carrier. The FMCSA would assume, as the WHD does, that missing records denote days off duty, unless the agency has or discovers evidence showing a driver worked on a presumed day off.

The FMCSA is requesting the OMB to assign the general information collection requirements of this section for all driver types the number 1215–0017 (the number assigned to 29 CFR part 516 records). The FMCSA is requesting the OMB to assign the additional required EOBR information collection requirements of this section for Type 1 and 2 drivers the number 2126–0001 (the current OMB number for 49 CFR part 395 records).

Sections 394.203, 395.203 Must Time Records Be Prepared in a Particular Order or on Particular Forms?

All records would be prepared as daily records, although the simpler systems allowed by WHD's regulation at 29 CFR 516.1(a) under OMB number 1217–0017 could be used. Motor carriers and drivers in Type 1 and 2 operations would be required to use EOBRs to record time worked and off-duty. The WHD does not require that employers prepare records in any particular order, form, or manner. The FMCSA would adopt this practice for all motor carriers using Type 3, 4, and 5 drivers.

Section 395.205 What Are My Responsibilities If I Use an Automatic Time Record System to Record My Duty Status?

This section would explain the Type 1 and 2 driver's responsibilities for preparing the required automated time records. The responsibilities would include: (1) accurately recording all off-duty, driving, and on-duty time, including daily starting and ending times for work periods and the place where work changes (i.e., town and State, town and Province, or location codes for such places), intervening times and locations during each work period when business is transacted (e.g., picking up freight or passengers, fueling stops, deliveries, roadside inspections), intervening times and locations during each work period when the required 2 hours off duty for rest and meals are taken; (2) system operational knowledge, following instructions of carriers and system manufacturers; (3) submission of records and documents obtained during each trip; and (4) production of records upon the request of a special agent of the FMCSA or any authorized law enforcement official.

If the system fails, the drivers would have to reconstruct any defective records for the current day and the previous 7 days, using the format required by carriers; prepare written records of all subsequent time periods until the system is operational, using the format required by the carrier; and produce the current records upon the request of a special agent of the FMCSA or any authorized law enforcement official.

The FMCSA would request the OMB to assign the information collection requirements of this section the number 2126–0001 for requiring EOBRs since they are not required by the WHD. The FMCSA has submitted new time and cost estimates associated with this information collection based upon the new requirements that are not already covered by the WHD regulations.

Time Record Maintenance and Preservation

Section 394.207 What Time Records Must I Preserve? For How Long?

This section is directed to the motor carrier. Paragraphs (a), (b), and (c) of these sections are similar to 29 CFR 516.6(a)(1), (b), and (c2).

Motor carriers must maintain records for two years to comply with WHD requirements. The FMCSA's current regulations require motor carriers to maintain these records for six months, and the FMCSA is proposing to maintain the retention period at six months. The FHWA has generally focused its compliance reviews of motor carriers on the last 90 to 120 days before the time of the investigation. The FMCSA has continued this practice. In most cases, this period is long enough to show a continuing pattern of behavior. This factor is important because it precludes a motor carrier's defense that previously discovered violations have ceased.

The FMCSA, however, would reserve the right to inspect all records the WHD requires motor carriers to maintain for the two-year period. If a motor carrier uses drivers who are not subject to WHD regulations, the motor carrier may not be required to maintain the records past the FMCSA retention period.

Monitoring Driver Time

Section 394.209 Must I Monitor My Drivers' Compliance With This Part and Part 395?

This section is directed to the motor carrier. It would set forth the requirements for motor carriers to systematically monitor driver compliance with the HOS requirements. This would make explicit the FMCSA's current implied requirement, that motor carriers monitor their drivers' HOS to ensure the drivers are fit and safe to operate CMVs. The FMCSA would require motor carriers to verify the accuracy of the drivers' on-duty and off-duty times and also monitor the records for violations.

Motor carriers should monitor continuously to discover a driver's HOS and off-duty hours for the past workday and workweek. Motor carriers that do so are able to calculate the driver's available hours for that workday and subsequent workdays before dispatching that driver.

Inspection of Records

Sections 394.211, 395.211 Must I Present My Equipment and Records If an FMCSA Special Agent Asks To Inspect Them?

These sections describe the obligations of motor carriers and drivers to provide access to equipment and records for inspection. Upon request by an FMCSA representative who displays proper credentials as a special agent, motor carriers and drivers must permit the inspection of all lands, buildings, equipment, and records, and the copying of records. Many drivers have inquired about State authorities' right to inspect equipment and records. State and local officials should have inspection authority similar to that of the FMCSA.

Sections 394.213, 395.213 What Records May Be Used To Determine My Compliance With This Part?

These sections specify the FMCSA's intention to use any information, whether or not in a motor carrier's or driver's possession, to determine a motor carrier's and driver's regulatory compliance and verify the accuracy of their records.

Sections 394.215, 395.215 Where Must I Keep Records Available for Inspection?

These sections tell motor carriers and drivers where to maintain time records: for inspection purposes, on the CMV and at the motor carrier's principal place of business or central recordkeeping office. It also would require motor carriers to ensure that drivers in Type 1 and 2 operations comply with § 395.215(a) (2) and (3) by requiring the motor carrier to collect and maintain the records required by § 394.207(b). These sections require Type 1 and 2 motor carriers and drivers to maintain time records and supporting records in the CMV where they will be available for inspection. Drivers in Type 3, 4, and 5 operations would not have to comply with this requirement.

Subpart C—Automated Time Record System Performance Standards

Section 394.301 What Standards Must Automated Time Record System Devices Meet?

Motor carriers required to use automated time record systems would have to ensure the systems meet certain manufacturing design and performance standards. These standards are similar to the current § 395.15 standards, though many of the prescriptive requirements have been removed to allow for innovative future technologies.

The automated time record system would have to be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed, including synchronized with engine use, road speed, the date, and time of day. The FMCSA would update the rule requiring ''miles driven'' by adding to it ''kilometers or miles driven each day'' as required by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100'418, sec. 5164) which amended the Metric Conversion Act of 1975. The FMCSA would require automated time record systems to be capable of maintenance and calibration, be tamperproof, and designed to prohibit drivers from editing data.

The systems must also warn the driver visually and/or audibly when the systems cease to function or when they identify sensor failures or data edited by anyone when reproduced in printed form. The systems must also permit duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State, Provincial, or national boundary. This would ensure that the driver's attention is on the road rather than electronic devices within the CMV.

The information must be shown on a chart, electronic display, or printout and the system must allow the FMCSA and authorized State or local officials to check the driver's daily duty at the roadside.

Support systems used in conjunction with automated time record systems at a driver's home terminal or the motor carrier's principal place of business must be capable of providing the FMCSA or authorized State or local officials with summaries printed on paper of an individual driver's duty records. The support systems must also provide information concerning system sensor failures and identification of edited data.

The system on the CMV must automatically record duty and additional standard information as follows ''Off duty,'' ''Driving,'' ''On duty not driving,'' or equivalent codes for these items; the date; total kilometers or miles driven per day; truck, tractor, coach, and trailer number(s); name of motor carrier; and home terminal address, including zip code; 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.); name of co-driver, if applicable; total hours on duty per day; and the name or location code of the city, town, or village, with State or Provincial abbreviation where the driver changes duty status (off duty, on duty, driving). A list of location codes

showing all possible location identifiers must be available in the CMV and at the motor carrier's principal place of business or central recordkeeping office.

An information packet containing the following two items must also be on the CMV: an instruction sheet describing in detail how data may be stored and retrieved from the system and a supply of blank driver's duty records sufficient to record the driver's duty status and other related information for the duration of the current trip.

Automated time record systems on CMVs with electronic displays must have the capability to display the driver's total hours of driving per day, the total hours on duty per day, total kilometers or miles driven each day, total hours on duty for the previous 7 consecutive days, including today, the sequential changes in off-duty, on-duty, and driving status and the times the changes occurred for each driver using the system. The system must also be capable of recording separately each driver's off-duty, on-duty, and driving status when there is a multiple-driver operation.

The current rule in § 395.15 provides an exception for systems installed and in operation since October 31, 1988, based on the original pilot demonstration project. The exception allows for no visual or audible warning and it allows for sensor failures and edited data not to be identified in printed form. The FMCSA is interested in specific comments from motor carriers that are using such excepted systems about the number being used and any costs that may be incurred in upgrading those systems to the proposed EOBR standard requiring the visual or audible warning and printed records of sensor failures and edited data. The FMCSA is proposing not to allow those systems upon the implementation dates of the final rule and would like to know the extent such systems continue to be used. The FMCSA may modify whether upgrades are needed based on the extent the excepted systems continue to be used and the costs to be incurred.

Section 394.303 How Must I Maintain and Regularly Calibrate Automated Time Record System Devices?

This section would require motor carriers to have a systematic maintenance process to ensure that each automated time record system remains accurate in accordance with the manufacturer's directions.

Section 394.305 Must I Train My Drivers Regarding the Proper Operation of the Devices I Use?

This section would require drivers be trained in the proper operation of the devices installed on CMVs. This does not require the motor carrier to do the actual training, but to ensure the driver understands how the devices work. The driver may have acquired the knowledge while working for a different motor carrier.

Subpart C—Roadside Out-of-Service Orders

Section 395.301 What Must I Do If I Am Declared Out of Service for Violations of This Part?

This section specifies what a driver must do if he or she has been placed out of service because the FMCSA or another authorized enforcement official has determined the driver has violated one or more of the regulations in this part.

Subpart D—Emergency Operations

Section 395.401 What Must I Do If I Need Immediate Rest After Providing Direct Assistance in an Emergency?

This section would expressly require drivers to take an additional minimum off-duty period after emergency service. This increased time would be at least ten hours. It would be correlated to the motor carrier requirements in § 390.23 discussed above.

Section 395.403 What Conditions Must I Meet Before I Operate in Interstate Commerce After Providing Direct Assistance in an Emergency?

This section would require drivers to obtain two consecutive nights of sleep including the core periods from midnight to 6:00 a.m. for the purpose of obtaining restorative sleep after an emergency.

Transportation of Migrant Workers

Section 398.6 Hours of Rest and Work; Minimum Rest and Maximum Work Time.

The applicability of part 398 is confined to a small population of private motor carriers of passengers and contract carriers that transport migrant agricultural workers in interstate commerce. This is due to the limited authority of the Migrant Farm Workers Regulation of Interstate Transportation Act of 1956, Pub. L 84–939, 70 Stat. 958, August 3, 1956 (MFW) (now codified at 49 U.S.C. 31502(c)). This law required the ICC to establish reasonable requirements with respect to the safety and comfort of migrant agricultural workers who are transported by certain private and for-hire motor carriers.

The term ''migrant worker'' as defined by the 1956 Act and part 398 means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the FLSA, as amended (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 [2] (26 U.S.C. 3121(g)). The term ''carrier of migrant workers by motor vehicle'' as defined by the 1956 Act and part 398 means any person, including any ''contract carrier by motor vehicle,'' but not including any ''common carrier by motor vehicle,'' who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself/herself or his/her immediate family. ''Immediate family'' in this context comes directly from the Farm Labor Contractor Registration Act of 1963 (FLCRA),[3] Public Law 88–582, with regulations at 29 CFR 40.2(f) and 29 CFR 500.20(o) which define ''immediate family'' as: (1) A spouse; (2) children, stepchildren, and foster children; (3) parents, stepparents, and foster parents; and (4) brothers and sisters. Under this definition, a truck carrying an uncle, a brother-in-law, or another unrelated laborer would be subject to part 398.

Part 398 applies to motor carriers of migrant workers only in the case of transportation of any migrant worker for a total distance of more than seventy-five miles, and then only if such transportation is across the boundary line of any State, the District of Columbia, a Territory of the United States, or a foreign country.

Motor carriers of migrant workers currently comply with the 10-hour driving rule as it applied to all motor carriers prior to 1962. This rule has continued the limitation for 10 hours of driving within any 24-hour period. Such carriers and drivers have not been subject to the 15-hour rule, the weekly limitations, nor the recordkeeping requirements. Many of these motor carriers have been subject to the recordkeeping provisions of the FLSA and the MSAWPA. The WHD administers and enforces the FLSA and MSAWPA. The WHD has the same

[2] The Internal Revenue Code of 1954 was replaced by the Tax Reform Act of 1986.

[3] Replaced by Public Law 97–470 (1983) the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) (29 U.S.C. 1801 *et seq.*).

§ 398.6 HOS regulations for migrant workers in 29 CFR part 500.

This section would direct motor carriers of migrant workers to comply with the proposed requirements of part 394. Drivers working for motor carriers of migrant workers would have to comply with the applicable requirements of part 395. Thus, these motor carriers of migrant workers would become subject to all of the general and specific responsibilities that ensure drivers obtain sufficient restorative sleep and that prohibit ill and drowsy, tired, or inattentive drivers from continued driving. It would be expanding their responsibilities to better ensure the migrant workers are protected from ill, drowsy, tired, or inattentive drivers that have not had sufficient restorative sleep.

Under the FMCSA's zerobase initiative discussed earlier in this document, migrant motor carrier regulations are also being rewritten and reformatted. That proposed rulemaking will be published later. It contains the balance of the FMCSA's consideration of migrant worker transportation rules covered under RIN 2125–AD81. See the section headed ''XII. Rulemaking Analysis and Notices'' for more information about RINs.

XII. Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document, FHWA–97–2350, in the docket room at U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC. Internet users may access the comments received by the U.S. DOT Dockets Room, by using the universal resource locator (URL): *http://dms.dot.gov* and the docket number FHWA–97–2350. The FMCSA will file in the docket comments received after the comment closing date and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Regulatory Identification Number

An RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document, RIN 2126–AA23, can be used to cross reference this action with the Unified Agenda. This action formerly was identified under RIN 2125–AD93 during FHWA development. This action contains a total consolidation of RINs 2125–AD52 and 2126–AA29 (formerly 2125–AE09) (HOS of Drivers; Supporting Document Recordkeeping and FMCSRs; HOS and CDL Exemptions; respectively) into this RIN 2126–AA23, a partial consolidation with respect to hours of service under RIN 2125–AD81 (Transportation of Migrant Workers) and RIN 2126–AA16 (formerly 2125–AD65) (Advanced Technology in Commercial Motor Vehicle Operations), a discussion of the comments received to RIN 2125–AD52, and a modified proposal based upon the comments received to RIN 2125–AD52.

Motor Carrier Safety Act

The MCSA was the first broad legislation dealing with truck safety since the Motor Carrier Act of 1935. It required the FHWA and requires the FMCSA to establish safety standards for CMVs which ensure, at a minimum, that:

(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) The responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) The physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(4) The operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators. 49 U.S.C. 31136(a).

Section 31136(a)(2), (3), and (4) authorizes the FMCSA to consider very broadly all operational factors that may adversely impact the health and physical condition of drivers, and thus highway safety.

Before prescribing regulations, the agency must also consider, to the extent practicable and consistent with the purposes of the MCSA, the costs and benefits of any rules (49 U.S.C. 31136(c)(2)(A)). The Senate Committee on Commerce, Science, and Transportation explained the intent of the cost-benefit requirement.

> The [FMCSA] is required to consider, where practicable, costs and benefits before establishing or revising such rules, regulations, standards, and orders. In requiring the [FMCSA] to consider the costs and benefits, where practicable, in the course of regulatory activities, the Committee realizes that many aspects of safety and health regulations do not lend themselves to detailed cost-benefit analysis. However, the Committee intends that the [FMCSA], in issuing a regulation, will perform some type of cost-benefit analysis, recognizing that while the benefits of a particular rule or regulation may be substantial, they may not be quantifiable. Additionally, the Committee does not intend such requirement to have the effect of precluding, preventing, or suspending the promulgation or revision of rules, regulations, standards, or orders due to difficulty in establishing specific, quantified cost or benefit data. S. Rep. No. 98–424, at 8 (1984).

A portion of the anticipated effect of this action would come from changes to the information collection burdens associated with the proposed rule. A proposed requirement, however, would impose a substantial financial burden in start-up and continuing maintenance and operating costs. Purchasing EOBRs would burden motor carriers with a $253 million start-up cost for the first four years of a final rule, maintaining the devices would cost $229 million annually, and training would add another $5.6 million annually. This would be offset by an annual savings of $262.3 million based upon the information collection burden hour reduction of 37.47 million hours at an hourly rate of $7.00 per driver.

The proposed information collection burdens are described in more detail below under the heading XII. F. Paperwork Reduction Act.

This regulatory action contains proposed provisions that should affect public safety by preventing 115 fatalities and 2,995 injuries each year. The net result in benefits to society should be at least a discounted $5,321,000,000 over 10 years assuming a 7 percent discount rate.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this document contains an economically significant regulatory action under Executive Order 12866 and under the DOT's policies and procedures because the FMCSA estimates this action will have an annual effect on the economy of $100 million or more.

The FMCSA has also determined this regulatory action is significant under the regulatory policies and procedures of the DOT because of the high level of interest concerning motor carrier safety issues expressed by Congress, motor carriers, their drivers and other employees, State governments, safety advocates, and members of the traveling public.

The FMCSA does not anticipate that this regulatory action would adversely affect in a material way a sector of the economy, competition, jobs, the environment, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The FMCSA does not anticipate that this proposed action will materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of those programs.

This action was reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this proposed rule on small entities, including small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small entities operate as motor carriers of passengers or property in interstate or intrastate commerce. The FMCSA has placed a copy of the analysis in the docket.

The FMCSA believes that this proposal will effect a substantial number of small entities. What we do not know with certainty is the full economic impact of the proposal on small entities. We, therefore, specifically request on the costs and impacts of this proposal on small entities. If after receiving and reviewing public comments, our analysis indicates that the cost and impacts comparable to those used in this analysis, the FMCSA would then certify that the final rule does not have a significant impact on a substantial number of small entities.

The Regulatory Flexibility Act seeks to ensure that federal agencies take small businesses' particular concerns into account when developing, writing, publicizing, promulgating and enforcing regulations. To achieve this, the Act requires agencies to detail how they have met these concerns, by including a Regulatory Flexibility Analysis (RFA). An initial RFA, which accompanies an NPRM, must include the following six elements:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all federal rules which may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize and significant economic impact of the proposed rule on small entities.

A discussion of these requirements follows.

(1) A description of the reasons why action by the agency is being considered.

The FMCSA developed this NPRM because of Congressional action and independent safety concerns. Section 408 of the ICC Termination Act of 1995 directs the FMCSA to issue an ANPRM and NPRM ''dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving * * * and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness).'' In addition, evidence suggests that fatigue continues to be an important contributing factor in some CMV crashes. The FMCSA believes that updating the regulations to reflect advances in understanding of sleep and fatigue will increase compliance with the regulations, ease enforcement, and enhance overall highway safety.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objective of this NPRM is to ensure that drivers are adequately rested before driving CMVs. The proposals seek to do this by increasing the continuous off-duty periods of time afforded to drivers to obtain sleep, providing additional opportunities for some categories of drivers to obtain rest during breaks, and improving the daily sleep-wake cycle to correspond more closely with circadian rhytymicity. The proposals also seek to minimize the paperwork burden on carriers by eliminating the RODS for many drivers.

The legal basis for the rule, in addition to the provisions of the ICC Termination Act cited above, include the MCA codified at 49 U.S.C. 31502(a) and (b), the MFW codified at 49 U.S.C. 31502(c), the MCSA codified at 49 U.S.C. 31136, section 113 of the HMTAA, and section 345 of the NHS.

The HMTAA instructs the FHWA to issue regulations improving ''(A) compliance by commercial motor vehicle drivers and motor carriers with hours of service requirements; and (B) the effectiveness and efficiency if Federal and States enforcement officers reviewing such compliance''.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

This NPRM proposals would apply to a large number of small carriers. Of the 497,000 motor carriers on the MCMIS census file, almost 250,000 own 6 or fewer power-units, 50 percent of the total. These 250,000 motor carriers own approximately 703,000 power-units, an average of about almost 3 per carrier, accounting for approximately 22.5 percent of all power-units on MCMIS.

Not all of these motor carriers are considered small businesses under the definitions issued by the SBA. The SBA defines a small business as one with annual gross receipts of less than $18.5 million. We do not know what percentage of motor carriers fit into this category. While it is likely that the majority of motor carriers with fewer than 6 drivers have gross receipts of less than $18.5 million, the Agency believes some of them surpass that revenue threshold. The FMCSA's safety regulations apply to all operators of CMVs in interstate commerce, not only traditional motor carriers. Some of these CMV operators may make the majority of their revenue from non-trucking sources, but only own 2 or 3 CMVs. Examples include musicians who own buses for transportation between performances, or millwork distributors which operate a few CMVs to distribute finished millwork. While the small number of vehicles these operations own would suggest they are small entities, their gross revenues from non-trucking sources could result in their being classified as large entities.

In the PRE, the FMCSA estimated that option 5 would cost small long-haul and regional motor carriers $180 million undiscounted to purchase EOBRs, $152 million discounted. Annual costs equal $17.9 million undiscounted, for a total of approximately $103 million discounted over ten years. EOBRs will cost the average small long-haul motor carrier $2,850 to purchase and $282 annually for maintenance (undiscounted).

Data on firms and receipts from the SBA web site show that for SIC codes 4200 through 4214, small motor carriers had average annual receipts of just over

$400,000 in 1996. First year costs of $3,132 ($2,850 plus $282) equal approximately three fourths of one percent of the average small motor carriers receipts.

While overall costs are fairly high for small motor carriers, we believe it is likely that EOBR costs could be lower than estimated above. First, we assumed that small motor carriers would purchase one quarter of their EOBRs in each of the first four years. In reality, it is likely that most small motor carriers will wait until the latter years to buy an EOBR. This will lower the discounted EOBR costs, as later year purchases are discounted more highly than earlier ones. In addition, small motor carriers who purchase EOBRs in year 4 will have to pay for maintenance for 3 fewer years than those who purchase in the first year.

Second, the FMCSA believes it is likely that the price of EOBRs will fall as production increases. As manufacturers gain proficiency in producing a product, improved use of labor and material tend to lower the costs of productions. Improvements include reducing the number and complexity of component parts, improved production of components, improved assembly speed and processes, reduced error rates, and better manufacturing processes. In a 1984 study of 108 manufacturing items from 22 field studies, Dutton and Thomas found a progress ratio of slightly higher than 80 percent, which means that each doubling of cumulative production reduces the cost level by 20 percent (Dutton and Thomas). Because of the phase-in period for small motor carriers, larger motor carriers are likely to bear higher initial production costs.

Finally, many small motor carriers will be able to purchase EOBRs through larger motor carriers, thereby realizing the same scale economies as large motor carriers. Anecdotal information suggests that a majority of owner-operators are on long term leases with large motor carriers. One source of this information was oral communication between the executive-director of the Owner-Operator Independent Drivers Association (OOIDA) and Department of Transportation staff. OOIDA's executive director estimated that 70 percent of owner-operators work as long-term contractors with other motor carriers. Many of these long-term contractors will presumably be able to purchase EOBRs at the same cost as the larger motor carriers to which they are contracted.

The economic impact of this proposal on each motor carrier would vary depending on its operations and the number of drivers it uses. For motor carriers engaged in local operations (proposed regulatory Types 3, 4, and 5) subject to the requirements of the Fair Labor Standards Act, the economic impact should be zero because the motor carriers are already required to maintain time records and supporting documents to comply with U.S. Department of Labor regulations, and the FMCSA is proposing to allow these time records and documents to satisfy the recordkeeping requirements proposed in this NPRM. For motor carriers engaged in long-haul (Type 1) and regional (Type 2) operations, the majority of the economic impact would be caused by the proposed requirement to ensure CMVs have properly installed EOBRs and that its drivers use them as required. These impacts are directly related to the number of CMVs, and the number of CMV drivers, in those operations.

As an example of the potential economic effect of this proposed rule on a small motor carrier subject to the FMCSRs, consider one that operates three power units and has annual receipts of $400,000. See the discussion of the cost of EOBRs in the sections above headed VII. I. 2. Paperwork Reduction, VII. I. 3. Total Benefits, and VII. I. 4. Quantitative Costs. If the motor carrier were to purchase and install EOBRs in all these power units in one year, the estimated cost of the equipment and the initial year's operation would be $3,300, or 0.825 percent of its annual receipts (($1,000 plus 100) times 3 divided by $400,000). Next, consider a motor carrier that operates 20 power units and has annual receipts of $18.5 million. The economic impact would be $22,000, or 0.12 percent of its annual receipts (($1,000 plus 100) times 20 divided by $18.5 million). If a motor carrier operated 100 power units and had annual receipts of $18.5 million, the economic impact would be approximately 0.59 percent of the carrier's annual receipts ($110,000 divided by $18.5 million).

Consider the cost of EOBRs per CMV power unit. If a new CMV truck tractor costs $100,000, a $1,000 EOBR would be one percent of the cost of the truck tractor.

These figures do not include costs to train drivers and other staff on the operation and use of these EOBRs, nor do they account for savings in driver and other motor carrier staff resources associated with the elimination of the requirement to use paper RODS. They also present a worst-case economic scenario, because the motor carriers would probably amortize EOBR purchase and installation costs over several years.

Based on this summarized analysis, the FMCSA believes that this rule would affect a substantial number of small entities, but would not have a significant impact on these entities.

Therefore, the FMCSA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of these requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). However, this rule would impose a Federal mandate on the private sector requiring expenditure by motor carriers of $100 million or more in any one year. Therefore, the FMCSA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FMCSA's Regulatory Accountability and Reform Analysis is included in the docket.

The FMCSA considered several regulatory alternatives and believes that this proposal achieves the objectives of the rulemaking to reduce CMV crashes involving fatigue-induced CMV drivers.

The FMCSA believes the benefits of this NPRM can be achieved only by forcing motor carriers and Type 1 and 2 drivers to make a dramatic change in their present attitude toward compliance in long-haul and regional operations. Their attitudes are unlikely to change without requiring persuasive evidence that compliance would be monitored and enforced. The American public expects the motor carrier industry to do a better job for safety, based on the numerous comments from concerned victims and citizens in the docket. The FMCSA's proposal to require an objective tamper-proof monitor on board long-haul and regional operating CMVs should achieve that objective, even though the option selected is not the least burdensome, least costly, nor the most cost effective for society.

The FMCSA estimates that the hours of rest and service of drivers rule will cost the public approximately $817 million over ten years. The cost applies not only to motor carriers subject to the FMCSRs, but also to motor carriers subject to compatible State HOS of driver laws and regulations to be

adopted as proposed to be required under 49 CFR part 350 to be eligible for MCSAP grant-in-aid type program funds. The agency estimates that the 10-year discounted monetary value of the benefits (fatalities and injuries prevented, property damage savings) is $6.138 billion.

The FMCSA intends to assist State MCSAP agencies in revising and adapting their motor carrier safety regulations and safety assurance programs in two ways. First, the agency intends to allow a phase-in period for the final rule, after it is promulgated, to ensure that those responsible for safety regulation implementation and oversight functions can become fully familiar with the new format and content of the HOS rules. Second, the agency is developing model State legislation and regulations to aid States in adopting the rules proposed today or adapting them to their own regulatory programs. The agency would also make special efforts to provide education, training, and guidance materials for MCSAP agencies and their staffs. The FMCSA welcomes comments from State and local government agencies concerning any potential difficulties they anticipate in making the transition to, and adopting, compatible regulations promulgated as a result of this action.

The FMCSA estimates that transition costs for States that wish to continue receiving MCSAP grant-in-aid funds to revise and implement their regulations to remain compatible with the proposed revisions would be approximately 5 percent of a year's MCSAP allocation. Nationwide, MCSAP allocations total approximately $80–85 million per year. Because States are given three years to adopt revisions to the FMCSRs, this estimated transition cost of between $4 million and $4.25 million would be distributed over that same time period. As described earlier in this section, the FMCSA plans to assist the States with the development of model legislation, transition planning, and data entry and analysis to ensure that there would be continuity between the regulations comprising the current CMV safety program and those revisions that may result from the changes proposed today.

The FMCSA believes that one significant cost element would involve training of State and local government MCSAP officials in the proposed new structure of the HOS regulations and the accompanying revisions to the microcomputer software suites used to perform roadside CMV safety inspections and motor carrier compliance reviews. The MCSAP program funds the work of 7,500 to 8,000 safety officials (6,000 full-time and 1,500–2,000 part-time). The FMCSA estimates it would take one-half day of instruction (4 hours) to familiarize these officials with the new software. The FHWA has paid average loaded salaries of State safety officials at $30.00 per hour in the past year. At an average loaded salary of $30.00 per hour (including benefits), the approximate salary costs would be $960,000. Costs of notebooks and other classroom materials (at $10 per student) would amount to another $80,000. Software upgrades would be required in centralized State information systems, as well as in desktop and laptop computers used in the field. Because some States' centralized information systems are housed on mainframe computers, and others depend on the FMCSA's system, estimates of upgrade costs will vary considerably. The FMCSA estimates an additional $2 million to $3 million in other costs (software revisions, other training and testing) associated with the transition.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this proposal, when promulgated as a final rule, would revise several existing aspects and add new requirements to a currently approved clearance for OMB Control Number 2126–0001 (which is due to expire on October 31, 2001).

The FMCSA, in previous estimations of time and cost burdens associated with OMB Control Number 2126–0001, omitted burdens imposed upon State governments. Title 5 CFR 1320.3 requires the FMCSA to include in its information clearance package burdens imposed upon a recipient of a Federal grant if the terms and conditions of the grant require specific approval by the agency of the collection of information or collection procedures. As a condition to receive an FMCSA Motor Carrier Safety Assistance Program (MCSAP) grant, State governments are required to adopt and enforce compatible regulations for intrastate motor carriers and CMV and, therefore, should be considered when estimating burdens associated with the Driver's Record of Duty Status information collection.

When the FHWA last published a 60-day notice in compliance with 5 CFR 1320.8 on March 11, 1998 (63 FR 11948), the IIHS was the only commenter to the public docket. The IIHS supported continuation of the paper ''logs'' until they are replaced by on-board computers. The agency also sought OMB's approval of an emergency extension for a six-month period of time. That notice was published in the **Federal Register** on May 13, 1998 (63 FR 26675). Neither opportunity for comments brought to the FHWA's attention the fact that it had omitted intrastate motor carrier information collections. When the FMCSA conducted its regulatory analysis for this NPRM, the agency discovered the error. The FMCSA is correcting the intrastate operations error as well as providing better data of the number of respondents in a revised submission to the OMB.

Currently, the inventory indicates a burden for 2126–0001 of 42,464,327 burden hours, rounded to 42.5 million hours. Based on the regulatory evaluation and the option selected to propose, the FMCSA is submitting to the OMB for review in accordance with the PRA requirements a burden of 3,003,050 burden hours for this NPRM.

OMB Control Number: 2126–0001.

Proposed New Title: Hours of Service of Driver Regulations.

Affected Public: Approximately 483,000 motor carriers using approximately 6.43 million drivers who operate in interstate and intrastate commerce.

Estimated Annual Hour Burden: 3,003,050 million burden hours.

The paper RODS and automatic on-board recording devices have been the primary regulatory tools used by motor carriers and CMV drivers to determine compliance with the maximum driving and duty time limitations prescribed in the FMCSRs. The FMCSA also uses the current RODS and automatic on-board recording device records to determine compliance during compliance reviews. Federal, State, and foreign government officials use the information for roadside enforcement. The FMCSA also considers compliance with the HOS requirements as a factor in its determination of a motor carrier's safety fitness.

Information Collections for Type 3, 4, and 5 Drivers

For CMV drivers who return to their normal work reporting location at the end of the work day (Types 3, 4, and 5 as described in this NPRM), the FMCSA proposes to conform the requirements similar to those of the WHD. A requirement to use a time record is currently codified at 49 CFR 395.1(e). The provision is currently available to motor carriers whose drivers operate within a 100 air-mile radius of their normal work reporting location and who

return to the work reporting location and are released from duty within 12 consecutive hours. The FMCSA proposes to extend this provision to drivers who return to the work reporting location and are released from duty within the same 12 consecutive hours generally, removing the distance-based limitation of the current regulation.

Like the ''100 air-mile radius'' CMV drivers of today (49 CFR 395.1(e)), Type 3, 4, and 5 drivers would not be required to carry their time records with them on their CMVs. Enforcement officials inspecting Type 3, 4, or 5 drivers at the roadside would have the opportunity, as they do now, to investigate the driver's claim by contacting or visiting the driver's normal work reporting location to review the driver's time record.

Information Collections for Type 1 and 2 Drivers

For CMV drivers in long-haul and regional operations (Types 1 and 2 as defined in this NPRM), the FMCSA is proposing a requirement for installation and use of EOBRs (electronic on-board recorders, i.e., a semi-automated time record). The requirement would include identifying the locations where changes in duty status occur. The FMCSA estimates that 1.25 million drivers would be affected by this element of the proposed rule.

The agency is proposing a phased-in requirement for these motor carriers based upon the number of power units (*e.g.*, truck-tractors, straight trucks, buses, specialized equipment) they operate. During the phase-in period, motor carriers and drivers that are not yet required to use EOBRs may install and use them, at their option. If they are not yet using EOBRs, however, they must comply use RODS that conform to the requirement contained at the current 49 CFR 395.8.

The FMCSA proposes to require motor carrier fleets with more than 50 power units to use EOBRs two years after the effective date of a final rule. Fleets with 21 to 50 power units would have three years, and fleets with 20 or fewer power units would have four years before they are required to use these devices. During this phase-in period, motor carriers may use EOBRs prior to the time they are required to do so. However, motor carriers and their drivers that have not begun using EOBRs would be required to use the RODS currently required under 49 CFR 395.8 as well as retaining the appropriate supporting documents.

For Type 1 and 2 motor carriers and drivers, the FMCSA and its State partner safety officials would use the on-duty and off-duty periods of time recorded by EOBRs and drivers to enforce the new safety regulations. During the proposed phase-in period, motor carriers and drivers not yet using EOBRs, and the FMCSA and State officials reviewing their compliance with the HOS requirements, would continue to use the RODS.

For all Driver types

The FMCSA intends to continue to require motor carriers to retain drivers' time records and supporting documents for six months from the date they receive them from their drivers. Motor carrier employers are required to maintain for two years time records and documents required by the U.S. Department of Labor under 29 CFR Part 516 (OMB control number 1215–0017). The FMCSA proposes to use those records, at its option, for the purpose of verifying motor carriers' and drivers' compliance with the hours of work and hours of rest regulations during the two-year period.

For all operations, motor carriers would be required to systematically monitor compliance with these proposed rules in order to detect drivers' failures to make records or detect false entries on records that point towards potential HOS violations, and to maintain records of the violations found. All motor carriers would also be required to disclose to their drivers their loading and unloading practices so that drivers may reserve sufficient time and energy to prevent unforeseen fatigue-causing delays or exertions, and avoid misunderstandings about possible lumping violations.

The FMCSA believes these requirements meet the principles of the Paperwork Reduction Act of 1995 by ensuring—

(1) The information collection is the least burdensome necessary for the proper performance of the FMCSA's safety mandate.

(2) The information collection does not duplicate information collected by other agencies. The FMCSA believes the information collected by DOL to comply with the WHD regulations would also satisfy the FMCSA's requirements. Further, since motor carrier employers are required to make this information accessible to the WHD for all employees, there should be no additional burdens associated with making it accessible to the FMCSA.

(3) The information collection has practical utility. The FMCSA has sought to minimize the cost to itself of collecting, processing, and using the information, but not to accomplish this by shifting disproportionate costs or burdens onto the public.

The FMCSA seeks public comment on this proposed information collection requirement. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical use;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

The collections of information contained in this NPRM relating to OMB Control Number 2126–0001 have been submitted to OMB for review under section 3507(d) of the PRA. Please direct all comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Transportation. Comments may be received within 30 days of publication up to the close of the rule's comment period, but comments to OMB will be most useful if received by OMB within 30 days of publication.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this action under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks, and found it to be economically significant. This NPRM, however, does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has determined this proposed rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

The proposed changes to the HOS rules would not preempt any State law or regulation. However, the FMCSA is proposing to eliminate the hours of service of drivers' tolerance guidelines that allow State governments to have and enforce compatible HOS regulations for intrastate commerce. The current tolerance guidelines consider the following to be compatible with the FMCSRs: a 12-hour driving limit; a prohibition on driving after 16 hours on duty; and prohibitions on driving after 70 hours on duty in 7 consecutive days or 80 hours in 8 consecutive days.

The FMCSA is proposing to revise the MCSAP Tolerance Guidelines and the compatibility guidelines for regulatory review concerning intrastate HOS regulation compatibility. The FMCSA is proposing to require compatible State intrastate rules within three years from the effective date when the last group of interstate motor carriers, those with fewer than 20 power units, must comply with the automated time record system requirements (1,305 days after the date of publication of the final rule in the **Federal Register**). This would allow States to review and modify existing laws and regulations as allowed by Part 355, Appendix A, State Determinations, section 3.

The FMCSA is proposing to revise § 350.341 of the FMCSRs to require States to adopt and enforce the proposed regulations. After this three-year period, States that are not compatible would not be eligible to participate in MCSAP until they became compatible. This action would not have an impact on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number or 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers.

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 394

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Drivers, Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 398

Highway safety, Migrant labor, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: April 24, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA is proposing to amend Title 49, CFR, chapter III, as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority section of part 350 continues to read as follows.

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310-31311, 31502; and 49 CFR 1.73.

2. Section 350.341 is revised to read as follows.

§ 350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?

(a) A State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the GVW, GVWR, GCW, nor GCWR of the vehicle exceeds 11,801 kg (26,001 lbs.). However, a State may not exempt a CMV from such laws or regulations if the vehicle:

(1) Transports hazardous materials requiring a placard.

(2) Is designed or used to transport 16 or more people, including the driver.

(b) State laws and regulations applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed (e.g., for-hire, private, etc.).

(c) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

(d) State laws and regulations applicable to intrastate commerce must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs.

(e) Age of CMV driver—All CMV drivers must be at least 18 years of age.

(f) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs and provide an orderly transition to full regulatory adoption at a later date.

(g) Driver qualifications. (1) Intrastate drivers who do not meet the physical qualification standards in 49 CFR 391.41 may continue to be qualified to operate a CMV in intrastate commerce if the following three conditions are met:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened.

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the variances are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

3. The authority citation for part 390 continues to read as follows.

Authority: 49 U.S.C. 13301, 13902, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

4. Section 390.23 is revised to read as follows.

§ 390.23 Relief from regulations.

(a) Parts 390 through 399 of this chapter do not apply to any motor carrier or driver operating a commercial motor vehicle to provide emergency relief during an emergency, subject to the following time limits:

(1) *State emergencies.* (i) The exemption provided by paragraph (a)(1) of this section is effective only when:

(A) An emergency has been declared by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; or

(B) The State Director of the Federal Motor Carrier Safety Administration has declared that a State emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) Except as provided in § 390.25, this exemption will not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the date of the initial declaration of the emergency or the exemption from the regulations by the State Director of the Federal Motor Carrier Safety Administration, whichever is less.

(2) *Local emergencies.* (i) The exemption provided by paragraph (a)(2) of this section is effective only when:

(A) An emergency has been declared by a Federal, State, or local government official having authority to declare an emergency; or

(B) The State Director of the Federal Motor Carrier Safety Administration has declared that a local emergency exists which justifies an exemption from parts 390 through 399 of this chapter.

(ii) This exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the State Director of the Federal Motor Carrier Safety Administration, whichever is less.

(3) *Tow trucks responding to emergencies.* (i) The exemption provided by paragraph (a)(3) of this section is effective only when a request has been made by a Federal, State or local police officer for tow trucks to move wrecked or disabled motor vehicles.

(ii) This exemption shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief, or 24 hours from the time of the initial request for assistance by the Federal, State, or local police officer, whichever is less.

(b) *Termination of assistance.* (1) Direct assistance terminates as provided in paragraph (a) of this section or when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or vehicle to another location to begin operations in commerce.

(2) Upon termination of direct assistance to the emergencies covered by this section, the motor carrier or driver is subject to all of the requirements of parts 390 through 399 of this chapter.

(3) *Exception:* The relief from regulations extends, without the prior approval required under § 390.25, to a driver's return trip directly from the location of the emergency assistance to the motor carrier's terminal or the driver's normal work reporting location. However, any driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive, uninterrupted hours off duty before the driver is required to return to such terminal or location.

(c) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to an emergency covered by this section, no motor carrier must permit or require its driver to drive nor must any such driver drive in commerce until the driver has met the following three conditions:

(1) The driver has been off duty for at least 10 consecutive, uninterrupted hours, including one period from midnight to 6:00 a.m.

(2) After providing direct assistance for more than three consecutive days, the driver has been continuously off duty for a period that consists of two consecutive midnight to 6:00 a.m. periods.

(3) The driver has at least one hour off duty after 6:00 a.m.

5. Section 390.25 is revised to read as follows.

§ 390.25 Extension of relief from regulations—emergencies.

(a) The State Director of the Federal Motor Carrier Safety Administration may extend the 30-day time period of the exemption contained in § 390.23(a)(1), but not the 5-day time period contained in § 390.23(a)(2) or the 24-hour period contained in § 390.23(a)(3). The decision to extend the exemption is based on a determination whether such relief is necessary taking into account both the severity of the ongoing emergency and the nature of the relief services to be provided by the carrier or driver. Any extension must establish a new time limit and may place on the motor carrier or driver any other restrictions deemed necessary.

(b) Any motor carrier or driver seeking to extend the 30-day limit must obtain approval from the State Director of the Federal Motor Carrier Safety Administration in the State in which the emergency was declared before the expiration of the 30-day period. The motor carrier or driver must give full details of the additional relief requested.

6. Part 394 is added to read as follows:

PART 394—MOTOR CARRIER FATIGUE PREVENTION

Subpart A—Motor Carrier Operations

Purpose, Standards, Penalties, and Exemptions

394.101 What are the purpose and standards of this part?
394.103 What must I do to enhance driver alertness?
394.105 What are the penalties for failing to comply with this part?
394.107 What definitions apply to this part?
394.109 What operations are exempt from the requirements of this part?

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394.111 When must I begin to comply with the rules in this part?

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394.121 Are there different rules for different types of operations?
394.123 How do I determine which requirements apply to my operations?
394.125 May I assign my drivers to more than one type operation within a workweek?

Fatigued Drivers

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Daily Time

394.141 How many consecutive hours must my drivers remain off duty before beginning each workday?
394.143 What are the consequences of interrupting a driver's minimum consecutive off-duty hours?
394.145 Must I allow my drivers additional off-duty time after they begin work?
394.147 How long may drivers be on duty?
394.149 How long may drivers drive motor vehicles?

Weekly Time

394.161 How many consecutive off-duty hours per workweek must I give my drivers?
394.163 When may my drivers start work after being off duty at the end of a workweek?
394.165 How many hours per week may my drivers be on duty?

Summary of Hour Limits

394.167 Can these requirements be summarized in a chart?

Loading and Unloading Practices

394.169 What must I do regarding the loading and unloading responsibilities of drivers?

Subpart B—Records and Reports

Time Records To Be Prepared and Kept By Motor Carriers

394.201 What records must I create showing that my drivers comply with the off-duty and on-duty requirements?
394.203 Must time records be prepared in a particular order or on particular forms?

Time Record Maintenance and Preservation

394.207 What time records must I preserve? For how long?

Monitoring Driver Time

394.209 Must I monitor my drivers' compliance with this part and part 395?

Inspection of Records

394.211 Must I present my equipment and records if an FMCSA special agent asks to inspect them?
394.213 What records may be used to determine my compliance with this part?
394.215 Where must I keep records available for inspection?

Subpart C—Automated Time Record System Performance Standards

394.301 What standards must automated time record systems meet?
394.303 How must I maintain automated time record system devices?
394.305 Must I train my drivers regarding the proper operation of the devices I use?

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

Subpart A—Motor Carrier Operations

Purpose, Standards, Penalties, and Exemptions

§ 394.101 What are the purpose and standards of this part?

(a) *Purpose.* The purpose of this part is to improve highway safety by promoting the use of well-rested, alert, and attentive drivers.

(b) *Requirements.* This part requires you, the motor carrier, to provide your drivers with sufficient off-duty time, daily and weekly, to ensure they have adequate opportunity for restorative sleep prior to reporting for duty. You must comply with paragraph (c) of this section. You should also make every effort to comply with paragraph (d) of this section.

(c) *Standards.* As a motor carrier, you must:

(1) Provide each driver a minimum consecutive off-duty period of time each day and cumulative off-duty time each week to obtain restorative sleep.

(2) Make available an additional minimum off-duty period of time each workday to allow each driver to attend to personal necessities and rest at the driver's discretion.

(3) Empower the driver to accept or refuse a driving assignment or continuation of a trip based upon the driver's self-assessment of his/her alertness.

(d) *Advisories.* As a motor carrier, you should:

(1) Develop scheduling, dispatching, and operating practices to avoid the use of drivers who are not sufficiently well rested to operate CMVs safely and that their workday driving schedules occur during periods of higher alertness (6:00 a.m. to midnight).

(2) Maximize your knowledge of and ability to implement operational safety management techniques, including fatigue prevention.

(3) Educate your employees, shippers, receivers, brokers, and others about the dangers and possible consequences of scheduling shipments that do not allow your drivers to obtain proper amounts of restorative sleep.

§ 394.103 What must I do to enhance driver alertness?

(a) You must comply with the following five requirements.

(1) You must restrict your drivers in Types 1, 2, 3, and 4 operations (see § 394.121) to no more than 12 hours on duty in any workday.

(2) You must restrict your drivers in Type 5 operations (see § 394.121) to no more than 13 hours on duty in any workday.

(3) In any workweek, you must provide your drivers the opportunity to obtain at least 32 to 56 consecutive hours off duty, including at least two periods from midnight to 6:00 a.m.

(4) You must not use or allow to be used a driver who is too ill or fatigued to complete a driving assignment safely. You must not penalize, discipline, dismiss, or discriminate against drivers who refuse to begin or continue a driving assignment due to illness or fatigue.

(5) You must comply with the other specific limitations contained in this part, as applicable to your operations.

(b) The Types of Operations are described in § 394.121.

§ 394.105 What are the penalties for failing to comply with this part?

(a) You are subject to civil penalties under 49 U.S.C. 521 and part 386 of this subchapter.

(b) The Federal Motor Carrier Safety Administration (FMCSA), or an official of a State or political subdivision of a State with authority over the safety of your motor carrier operations, may place your driver out of service.

(c) Knowing and willful violations of this part may give rise to criminal penalties under 49 U.S.C. 521(b)(6).

(d) Repeated violations of the regulations in this part may result in a determination under part 385 of this subchapter that you are unfit and lead to an order that you must cease operations.

§ 394.107 What definitions apply to this part?

The following definitions apply to this part:

Automated time record system means an electric, electronic, electromechanical, or mechanical system, including a device capable of recording driver's duty status information accurately and automatically as required by § 394.211 and subpart C of this part.

Driving time means all time at the driving controls of a motor vehicle in operation.

Off-duty time means any period when a driver is relieved from duty and is free to attend to personal necessities including sleep, meals, refreshment, rest, and relaxation. Each off-duty period must be at least 30 minutes long. Off-duty time may be taken in a CMV so long as the driver is relieved of other duties and responsibilities to the motor carrier. See also 29 CFR 785.16.

On-duty time means any period when a driver provides physical or mental exertion (whether burdensome or not) necessarily and primarily for the benefit of the driver's motor carrier. It includes all time when a motor carrier requires a driver to be on the motor carrier's premises, vehicles, equipment, or at other prescribed work places, except when the motor carrier expressly allows the driver to take rest breaks in vehicles or at a terminal. It also includes all such work for any other motor carrier or non-motor carrier employers. See also 29 CFR 785.16.

Workday means any fixed period of 24 consecutive hours.

Workweek means any fixed and regularly recurring period of seven consecutive workdays.

§ 394.109 What operations are exempt from the requirements of this part?

The following types of operations are exempt from the requirements of this part.

(a) *Agricultural operations.* The exemption in this section is based on Section 345(a)(1) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note).

(b) *Exemption.* The requirements of §§ 394.141 through 394.165 do not apply to any driver who is transporting agricultural commodities within a State if the transportation takes place entirely within a 185-kilometer (100-air-mile) radius of the source of the commodities or the distribution point for the farm supplies during the planting and harvesting seasons in that State, as determined by the State.

Note: This exemption does not relieve motor carriers of the responsibility to meet the general standards in § 394.101(c).

(c) *After concluding exempt agricultural operations.* (1) If a driver asks for immediate rest after completing exempt agricultural transportation, you must allow the driver to have at least ten consecutive, uninterrupted hours off duty before requiring the driver to return to non-exempt work.

(2) You must not permit or require a driver who has completed exempt agricultural transportation to drive in non-exempt operations until the driver has met the following three conditions:

(i) The driver has been off duty for at least ten consecutive, uninterrupted hours, including a period from midnight to 6:00 a.m.

(ii) After providing exempt agricultural transportation for more than three consecutive days, the driver has been continuously off duty for a period of at least 32 to 56 consecutive hours that includes two consecutive midnight to 6:00 a.m. periods.

(iii) The driver has at least one hour off duty after 6:00 a.m.

(d) *Specific definitions.* The following definitions apply to this section: (1) *Agricultural commodities* means farm crops that are produced from the soil on a farm, but does not include timber.

(2) *Farm supplies* means those items directly relating to the farming activities of planting, fertilizing, or harvesting crops that are delivered directly to a farm. This does not include materials that are used as a part of a non-farm business or materials to be used in a residence or home, including the farmer's residence.

(3) *Source of the commodities* means a farm where farm crops are produced, but does not include a farm planting or harvesting timber.

(e) *No preemptive effect.* This exemption does not preempt any other Federal, State, or local law for hours of service, safety of operation, or recordkeeping requirements.

Implementation Schedule

§ 394.111 When must I begin to comply with the rules in this part?

(a) You must begin using subpart A of this part applicable to each type of operation on [date 180 days after the date of publication of the final rule in the **Federal Register**].

(b) For Type 1 and 2 operations, you must comply fully with the requirements of subpart B and C of this part according to the following schedule. If on [date 180 days after the date of publication of the final rule in the **Federal Register**]:

(1) You operate more than 50 power units (owned or leased)—[date 2 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(2) You operate between 20 and 50 power units (owned or leased)—[date 3 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(3) You operate fewer than 20 power units (owned or leased)—[date 4 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(c) To be in full compliance with the requirements of this part:

(1) *General.* All motor carriers must have in place an operating systematic monitoring program as required in subpart B of this part.

(2) *Type 1 and 2 motor carriers.* All Type 1 and 2 motor carriers must:

(i) Have installed fully operational automated time record systems meeting the requirements of subpart C of this part.

(ii) Ensure you or your managers and supervisors are properly trained in their use as required in subpart C of this part.

(iii) Require your drivers to use them, and ensure they are properly trained.

(d) If you are not yet required to comply with the rules in subpart B of this part, regarding records and reports, and opt not to comply, you must, at a minimum, comply with the recordkeeping rules of 49 CFR 395.8 that were in effect on the day before [date 180 days after the date of publication of the final rule in the **Federal Register**] (See 49 CFR Parts 200–399 revised as of October 1, 1999.).

Types of Operations

§ 394.121 Are there different rules for different types of operations?

(a) There are five different types of operations. For each type, specific requirements apply for off-duty, on-duty, and driving periods during each workday and workweek. See §§ 394.141 and 394.161.

(b) The five types of operations are as follows.

(1) Type 1. Long-haul operations that require the driver to be away from his/her normal work reporting location for three or more consecutive workdays.

(2) Type 2. Long-haul operations that require the driver to be away from his/her normal work reporting location overnight, but for less than three consecutive workdays.

(3) Type 3. Operations that require the driver to operate a CMV during two separate scheduled duty periods on the same workday. The driver returns to his/her normal work reporting location and is released from work within 15 consecutive hours after first beginning work. The two duty periods are separated by at least a three-hour off-duty period during the workday.

(4) Type 4. Operations in which the driver returns to his/her normal work reporting location and is released from work within 12 consecutive hours after beginning work.

(5) Type 5. Operations in which driving is incidental to other primary work activities, and the driver returns to his/her normal work reporting location and is released from work within 15 consecutive hours after beginning work. The driving duties do not exceed 5 hours in a workday. For-hire carriers are not Type 5 operations.

§ 394.123 How do I determine which requirements apply to my operations?

(a) Your operations must fit within one of the categories described in § 394.121, and you must adjust your hours of operation to conform to the requirements applicable to that type of operation.

(b) Your compliance with requirements applicable to the type of operation will be determined by the actual facts and circumstances of your operations at the time compliance is required.

(c) If there is some reasonable doubt about your operational type, you must comply in good faith with the regulations applicable to the type that you believe best describes your operation.

§ 394.125 May I assign my drivers to more than one type operation within a workweek?

Your driver may move between the different types of operations after the appropriate off-duty time at the end of a workday or workweek for the previous type operation.

Fatigued Drivers

§ 394.131 What must I do if my driver becomes impaired by fatigue or illness?

(a) You must instruct your drivers to stop when they are drowsy, ill, or have other signs of fatigue. However, you may allow your drivers to drive the motor vehicle to the nearest place where the vehicle can be parked without creating a greater risk to safety than that caused by the continued operation by the ill or fatigued driver. Failure to comply with this paragraph may subject you to penalties specified in 49 U.S.C. 521 or subpart G of part 386 of this subchapter.

(b) You must not retaliate, penalize, discipline, dismiss, discriminate, demote, blacklist, threaten, or take any other retaliatory action against drivers who refuse to violate any Federal commercial motor vehicle safety regulations in this subchapter or State or local commercial motor vehicle safety laws, ordinances, or regulations.

(c) Actions contrary to paragraph (b) of this section are also violations of 49 U.S.C. 31105 and will subject you to action by the U.S. Department of Labor, which may require you to reinstate the driver, and pay back pay and compensatory damages, among other things.

(d) Drivers who believe they have suffered retaliation in violation of 49 U.S.C. 31105 may submit a complaint to any of the regional or area offices of the U.S. Department of Labor's Occupational Safety and Health Administration within 180 days of the retaliation for investigation. This is not a complete description of the requirements of 49 U.S.C. 31105. See 29 CFR part 1978 for details about your rights and responsibilities during the investigation.

Daily Time

§ 394.141 How many consecutive hours must my drivers remain off-duty before beginning each workday?

(a) You must require your drivers to remain off duty for at least the following number of hours before starting duty each workday:

If your driver is in this type of operation (see § 394.121)	Your driver must remain off duty for a minimum of
Type 1	10 consecutive hours of each workday
Type 2	10 consecutive hours of each workday
Type 3	9 consecutive hours of each workday
Type 4	12 consecutive hours of each workday
Type 5	9 consecutive hours of each workday

(b) *Exception.* (1) Your team drivers in Type 1 operations may take their 10 hours off duty in sleeper berth equipment in no more than two off-duty periods of at least 5 consecutive hours each. The on-duty and driving time between the two sleeper-berth periods must be counted as part of the on-duty period that begins after the second sleeper-berth period. On-duty periods may be interrupted by off-duty periods of less than 5 hours, but only periods of 5 or more consecutive hours in a sleeper berth count towards the required 10-hour off-duty period. Your drivers are limited by the on-duty and driving rules for the workday and workweek.

(2) Sleeper berth equipment is defined in § 393.76 of this subchapter.

§ 394.143 What are the consequences of interrupting a driver's minimum consecutive off-duty hours?

(a) If you interrupt your driver's consecutive off-duty hours, the minimum period before the driver may return to duty starts anew at the conclusion of the interruption. The time required to deal with your interruption must be counted as on-duty time.

(b) ''Interrupt,'' in this section, means you require drivers to undertake any responsibility for you as a motor carrier. An interruption includes, but is not limited to:

(1) Causing drivers to answer personally any type of communication device, including, but not limited to, a telephone, pager, beeper, facsimile mail machine, doorbell, global positioning system message, or any other type of device.

(2) Notifying drivers personally about an assignment.

(3) Requiring drivers to contact you or anyone else about the status of trips or conditions of loads.

(c) If you are subject to the minimum wage provisions of the Fair Labor Standards Act (29 U.S.C. 206), you and your drivers may also have to comply with the counting-of-hours principles in 29 CFR part 785.

§ 394.145 Must I allow my drivers additional off-duty time after they begin work?

(a) In Type 1, 2, and 5 operations, you must provide drivers at least two additional off-duty hours each workday to nap, rest, or attend to personal necessities.

(b) This two-hour period may be taken in segments of not less than 30 minutes at the discretion of your driver at any location, including the CMV.

(c) Drivers in Type 3 operations must have at least 3 consecutive hours off duty between their two split work shifts.

§ 394.147 How long may drivers be on duty?

(a) Type 1, 2, 3, and 4 drivers may be on duty no more than 12 hours within a 14-consecutive-hour period in any workday.

(b) Type 5 drivers may be on duty no more than 13 hours within a 15-consecutive-hour period in any workday.

§ 394.149 How long may drivers drive motor vehicles?

(a) You may require your drivers in Type 1, 2, 3, and 4 operations to drive no more than 12 hours in any workday.

(b) You may require your drivers in Type 5 operations to drive no more than 5 hours in any workday.

Weekly Time

§ 394.161 How many consecutive off-duty hours per workweek must I give my drivers?

(a) You must give every driver an off-duty period of at least 32 to 56 consecutive hours that includes at least two consecutive midnight to 6:00 a.m. periods before the start of the next workweek.

(b) In Type 1 operations, you must provide your drivers, for every two consecutive workweeks, with two such off-duty periods with a combined total of at least 112 hours.

(c) *Exception.* If you operate a groundwater well-drilling operation exclusively, you must give your driver at least 24 consecutive hours off duty at the end of each workweek. This exception is required by 49 U.S.C. 31136 note. To meet the standards of this part, however, you should provide your driver with the opportunity to sleep during two consecutive midnight to 6:00 a.m. periods of time and not begin work until 7:00 a.m.

§ 394.163 When may my drivers start work after being off duty at the end of a workweek?

Your drivers may start work after being off duty at the end of a workweek as follows:

The driver stops work between 11:01 p.m. on the workday immediately before this day and 11:00 p.m. on this workday	The driver may begin to work the next workweek on this workday no earlier than 7:00 a.m.
(a) Saturday	Monday
(b) Sunday	Tuesday
(c) Monday	Wednesday
(d) Tuesday	Thursday
(e) Wednesday	Friday
(f) Thursday	Saturday
(g) Friday	Sunday

§ 394.165 How many hours per week may my drivers be on duty?

(a) Your drivers in Types 1, 2, 3, and 4 operations may be on duty up to, but no more than, 60 hours in any workweek.

(b) Your drivers in Type 5 operations may be on duty up to, but no more than, 78 hours in any workweek.

(c) *Exception.* When your Type 1 driver is on a trip requiring two or more consecutive workweeks away from his normal work reporting location, the driver may average two weekly maximum on-duty periods, i.e. 120 hours. The longer period may be no more than 72 hours on duty before the end of the workweek.

Summary of Hour Limits

§ 394.167 Can these requirements be summarized in a chart?

In general, the following hourly limits apply, subject to any specific conditions listed in §§ 394.141, 394.145, 394.147, 394.149, 394.161, 394.163, and 394.165:

	In this type of operation, the driver	Must have this many consecutive hours off duty every workday	Must have this many additional hours off duty every workday	May be on duty for up to this many hours every workday	May drive only this many hours every workday	Must have an off-duty period every workweek that includes at least two consecutive midnight to 6:00 a.m. periods and at least this many consecutive hours off duty	May drive only this many hours every workweek	May be on duty only this many hours every workweek
(a)(1) One-week	Type 1	≥10	≥2	≤12	≤12	≥32 to 56	≤60 standard	≤60 standard
(2) Two-week flexible.	Type 1	≥10	≥2	≤12	≤12	One week ≥32 to 56 & Other week ≤80.	One week ≤72 & Other week ≤48.	One week ≤72 & Other week ≤48
(b)	Type 2	≥10	≥2	≤12	≤12	≥32 to 56	≤60	≤60
(c)	Type 3	≥9	≥3	≤12	≤12	≥32 to 56	≤60	≤60
(d)	Type 4	≥12	.....	≤12	≤12	≥32 to 56	≤60	≤60
(e)	Type 5	≥9	≥2	≤13	≤5	≥32 to 56	≤30	≤78

Loading and Unloading Practices

§ 394.169 What must I do regarding the loading and unloading responsibilities of drivers?

If you are a motor carrier of property,

(a) You must agree in advance with your shipper, receiver, or other consignee whether the driver has the responsibility for loading or unloading cargo.

(b) If these agreements make your driver responsible for loading and unloading, you must inform the driver of that fact.

(c) If your driver is required to provide any loading or unloading services, notwithstanding an agreement to the contrary, those services and time spent waiting count as on-duty time, and you must require the driver to include all time spent waiting, loading, and unloading in his/her duty hours. See 29 CFR part 785.

(d) The OMB has assigned the information collection requirements of paragraphs (a) and (b) of this section the number 2126–0001.

Subpart B—Records and Reports

Time Records To Be Prepared and Kept By Motor Carriers

§ 394.201 What records must I create showing that my drivers comply with the off-duty and on-duty requirements?

(a) *Type 1 and 2 drivers.* You must require each driver in a Type 1 and 2 operation to accurately record driving and on-duty time, as defined by this part and 29 CFR part 785, in an automated time record system meeting the requirements of subpart C of this part.

(b) *Type 3, 4, and 5 drivers.* You must create or cause to be created for each Type 3, 4, and 5 driver, accurate time and work records containing at least the following five items of information.

(1) Identity of driver.

(2) Daily starting and ending times for each on-duty period.

(3) Home terminal address, including zip code.

(4) Time of day and day of week each driver's workweek begins. If all employees, including drivers, have a workweek beginning at the same time on the same day, a single notation for the entire workforce or establishment will suffice.

(5) Total hours each driver was on duty each workday and workweek, as defined by this part and 29 CFR part 785.

(c)(1) The OMB has assigned the information collection requirements of paragraph (a) of this section the number 2126–0001.

(2) The OMB has assigned the information collection requirements of paragraph (b) of this section the number 1215–0017. The U.S. Department of Labor's Wage and Hour Division regulations require you to create other records, if you are a subject employer. See 29 CFR part 516.

§ 394.203 Must time records be prepared in a particular order or on particular forms?

(a) A particular order or form of records is required by this part only for Type 1 and 2 drivers.

(b) For all other types of drivers, you may maintain and preserve the records you create in paper, microfilm, microfiche, or electronic format.

(c) If you use electronic or mechanical word or data processing media, you must make adequate projection, viewing, and reproduction equipment available to the authorized FMCSA, State, and local enforcement personnel during inspections and investigations. The reproductions must be clear and identifiable by date or time period.

(d)(1) The OMB has assigned the information collection requirements of paragraph (a) of this section the number 2126–0001.

(2) The OMB has assigned the information collection requirements of paragraphs (b) and (c) of this section the number 1215–0017.

Time Record Maintenance and Preservation

§ 394.207 What time records must I preserve? For how long?

(a) *Basic records.* (1) You must preserve and retain all basic time records showing daily starting and ending times of individual drivers, or of separate work forces, for at least six months from the date of last entry.

(2) You must require all Type 1 and 2 drivers to provide you, and you must obtain, within 13 days following completion of the time record, all time records they create and maintain as required by § 395.201 of this subchapter. You must preserve and retain all Type 1 and 2 driver time records for at least six months from the date of the record.

(b) *Order, shipping, and billing records.* (1) You must preserve and retain for at least six months originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) that you retain or make in the usual course of business operations.

(2) You must require all Type 1 and 2 drivers to provide you, and you must obtain, within 13 days following completion of the time record, all order, shipping, billing, and other receipt records they create, receive, and maintain as required by § 395.201 of this subchapter. You must preserve and retain Type 1 and 2 driver time, order, shipping, billing, and other receipt records for at least six months from the date of the record.

(c) You must preserve and retain for at least six months records of additions to and deductions from driver pay or compensation that you make in the usual course of business operations, including:

(1) Total additions to or deductions from driver pay or compensation for each pay or compensation period, including purchase orders and pay or compensation assignments. The dates, amounts and nature of the items which make up the total additions and deductions.

(2) All records used by the motor carrier in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from driver pay or compensation.

(d) *Manufacturer's certificate.* You must preserve and retain for the length of time your automated time record system is in operation, and for at least six months after you no longer use such system, a copy of a written statement from the manufacturer of the system(s) certifying that the design of the system has been sufficiently tested under operational conditions to meet the requirements of subpart C of this part.

(e) *Back-up copies.* You must preserve and retain for at least six months a second copy (back-up copy) of the electronic time record system files required by this subpart, by month, in a physical location different from where the original data is stored.

(f)(1) The OMB has assigned the information collection requirements of paragraphs (a), (b), and (c) of this section the number 1215–0017. The U.S. Department of Labor's Wage and Hour Division regulations require you to preserve and maintain these and other records for at least two years, if you are a subject employer. See 29 CFR part 516.

(2) The OMB has assigned the information collection requirements of paragraphs (d) and (e) of this section the number 2126–0001.

Monitoring Driver Time

§ 394.209 Must I monitor my drivers' compliance with this part and part 395?

(a) You must systematically monitor each driver's compliance with the requirements of this part and part 395 of this subchapter. If you do not take effective action to penalize drivers' violations of, and thus to ensure their compliance with, these requirements, the FMCSA may hold you and/or the drivers responsible for the violations.

(b) The monitoring system must verify the accuracy of your drivers' on-duty and off-duty times recorded as required by § 394.201.

(c) Upon request of authorized FMCSA, State, or local enforcement personnel conducting an investigation, you must produce a written description of your monitoring system with an explanation of how it works.

(d) The OMB has assigned the information collection requirements of this section the number 2126–0001.

Inspection of Records

§ 394.211 Must I present my equipment and records if an FMCSA special agent asks to inspect them?

You must immediately comply with a request by an FMCSA special agent or other authorized law enforcement official who displays proper credentials and demands to inspect your equipment and records.

§ 394.213 What records may be used to determine my compliance with this part?

FMCSA officials or a State or local government official with authority over the safety of your motor carrier operations may use any information, whether or not in your possession, to determine your compliance with the requirements of this part and to verify the accuracy of the records you are required to maintain.

§ 394.215 Where must I keep records available for inspection?

(a) *Location of records while the motor vehicle is in operation.* You must require each of your drivers in Type 1 and 2 operations to keep in the commercial motor vehicle accurate daily off-duty, on-duty, and driving-time records for the day of work and the previous seven consecutive days showing the items required by subpart C of this part.

(b) *Location of records at all other times.* You must keep the records required by this part at the place or places of use, or at one or more established central recordkeeping offices where such records are customarily maintained. If you have more than one business location and maintain the records at a location other than your principal place of business, you must make the records available within 48 hours following notice from an FMCSA special agent or an official of a State or political subdivision of a State with authority over the safety of your motor carrier operations.

(c) *Inspection of records.* (1) Automated time records and handwritten records for drivers in Types 1 and 2 operations must be available for inspection and transcription at roadside for the day of work and the previous

seven consecutive days. The record must be available for inspection at your place of business within 13 days after the record is made.

(2) Time records for drivers in Types 3, 4, and 5 operations need only be available for inspection and transcription at your place of business.

(d) *OMB numbers.* (1) The OMB has assigned the information collection requirements of paragraphs (a) and (c)(1) of this section the number 2126–0001.

(2) The OMB has assigned the information collection requirements of paragraphs (b) and (c)(2) of this section the number 1215–0017. The U.S. Department of Labor's Wage and Hour Division regulations require you to provide for inspection for other records, if you are a subject employer. See 29 CFR part 516.

Subpart C—Automated Time Record System Performance Standards

§ 394.301 What standards must automated time record systems meet?

You must ensure the automated time record system(s) you use meet the following design and performance standards:

(a) The automated time record system installed on your commercial motor vehicles generate records that can be read, directly or remotely, at the driver's home terminal.

(b) The automated time record system must record the date, whether the engine is on or off, vehicle speed, kilometers and/or miles driven per day, and a continuous time scale.

(c) The automated time record system and associated support systems are capable of maintenance and calibration.

(d)(1) The automated time record system and associated support systems are, to the maximum extent practicable, tamperproof.

(2) The automated time record system prohibits drivers from editing data.

(e) The automated time record system warns the driver visually and/or audibly that the system has ceased to function.

(f) The automated time record system identifies sensor failures and data edited by anyone when reproduced in printed form.

(g) The automated time record system must permit duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State, Provincial, or national boundary.

(h) *Information collection standards.* (1) Automated time record systems must produce, upon demand, a driver's duty status chart, electronic display, or printout showing the time and sequence of duty status changes, including the driver's starting time at the beginning of each day.

(2) The system must provide a means whereby authorized Federal, State, or local officials can immediately check the driver's duty status at roadside.

(3) Support systems used in conjunction with automated time record systems at a driver's home terminal or the motor carrier's principal place of business must be capable of providing the FMCSA or authorized State or local officials with summaries of an individual driver's duty records. The support systems must also provide information concerning system sensor failures and identification of edited data.

(4) The system must automatically record the driver's duty status and additional standard information as follows:

(i) ''Off duty'' or ''OFF'', or by an identifiable code or character;

(ii) ''Driving'' or ''D'', or by an identifiable code or character (*i.e.,* whenever the commercial motor vehicle is in any forward or reverse gear);

(iii) ''On-duty not driving'' or ''ON'', or by an identifiable code or character;

(iv) Date;

(v) Total kilometers or miles driven each day;

(vi) Truck, tractor, coach, and trailer number(s), as appropriate;

(vii) Name of motor carrier;

(viii) Home terminal address, including zip code;

(ix) Workday starting time (*e.g.,* midnight, 9:00 a.m., noon, 3:00 p.m.);

(x) Name of co-driver, if applicable; and

(xi) Total hours on duty each day as defined by this part and 29 CFR part 785.

(5) The name or location code of the city, town, or village, with State or Provincial abbreviation, where the driver changes duty status (off duty, on duty, driving). A list of location codes showing all possible location identifiers must be available in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business.

(6) An information packet containing the following two items:

(i) An instruction sheet describing in detail how data may be stored and retrieved from the system; and

(ii) A supply of blank driver's duty records sufficient to record the driver's duty status and other related information for the duration of the current trip.

(7) Automated time record systems with electronic displays must have the capability of displaying the following five pieces of information:

(i) Driver's total hours of driving each day;

(ii) The total hours on duty each day, as defined by this part and 29 CFR part 785;

(iii) Total kilometers or miles driven each day;

(iv) Total hours on duty for the previous 7 consecutive days, including the current day, as defined by this part and 29 CFR part 785;

(v) The sequential changes in off-duty, on-duty, and driving status and the times the changes occurred for each driver using the system.

(8) In a multiple-driver operation, the automated time record system is capable of recording separately each driver's off-duty, on-duty, and driving status.

§ 394.303 How must I maintain automated time record system devices?

You must systematically maintain each automated time record system to ensure its accuracy in accordance with the manufacturer's specifications.

§ 394.305 Must I train my drivers regarding the proper operation of the devices I use?

You must ensure your drivers are, or have been, adequately trained regarding the proper operation of the devices you have installed on your CMVs.

7. Part 395 is revised to read as follows.

PART 395—DRIVER REST AND SLEEP FOR SAFE OPERATIONS

Subpart A—Rest and Sleep for Safe Operations

Purpose, Standards, Penalties, and Exemptions

Sec.
395.101 What are the purpose and standards of this part?
395.103 What must I do to enhance my alertness?
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395.131 What must I do if I become impaired by fatigue or illness?

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395.149 How long may I drive motor vehicles?

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395.161 How many consecutive hours per workweek must I take off duty?
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395.167 Can these requirements be summarized in a chart?

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395.169 What are the loading and unloading responsibilities of drivers?

Subpart B—Records and Reports

Time Records To Be Prepared and Kept By Drivers

395.201 What records must I make and maintain while working?
395.203 Must I prepare time records in a particular order or on particular forms?
395.205 What are my responsibilities if I use an automatic time record system to record my duty status?

Inspection of Records

395.211 Must I present my equipment and records if an FMCSA special agent asks to inspect them?
395.213 What records may be used to determine my compliance with this part?
395.215 Where must I keep records available for inspection?

Subpart C—Roadside Out-Of-Service Orders

395.301 What must I do if I am declared out of service for violations of this part?

Subpart D—Emergency Operations

395.401 What must I do if I need immediate rest after providing direct assistance in an emergency?
395.403 What conditions must I meet before I operate in interstate commerce after providing direct assistance in an emergency?

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

Subpart A—Rest and Sleep for Safe Operations

Purpose, Standards, Penalties, and Exemptions

§ 395.101 What are the purpose and standards of this part?

(a) *Purpose.* The purpose of this part is to improve highway safety by promoting the use of well-rested, alert, and attentive drivers.

(b) *Requirements.* This part requires you to get sufficient off-duty time, daily and weekly, to ensure that you have adequate opportunity for restorative sleep prior to reporting for duty. You must schedule your activities to take at least the prescribed off-duty time. You must comply with paragraph (c) of this section. You should also make every effort to comply with paragraph (d) of this section.

(c) *Standards.* As a driver, you must: (1) Drive only when you are sufficiently well rested to operate CMVs safely.

(2) Take a minimum consecutive off-duty period each day and cumulative off-duty period each workweek to obtain restorative sleep.

(3) Accept or refuse a driving assignment or continuation of a trip based upon your self-assessment of your alertness.

(d) *Advisories.* As a driver, you should:

(1) Take off-duty periods each workday to attend to personal necessities and rest at your discretion.

(2) Take off-duty periods each workday and workweek to ensure you are sufficiently well rested to operate CMVs safely, generally during periods of higher alertness (6:00 a.m. to midnight).

(3) Educate others about the dangers and possible consequences of not allowing you to obtain proper amounts of restorative sleep.

§ 395.103 What must I do to enhance my alertness?

You must comply with the following requirements.

(a) If you are a driver in a Type 1, 2, 3, or 4 operation (see § 395.121), you must not be on duty for more than 12 hours in any 24-hour period, no matter how many motor carriers or other employers you work for.

(b) If you are a driver in Type 5 operations (see § 395.121), you must not be on duty for more than 15 hours in any 24-hour period, no matter how many motor carriers or other employers you work for.

(c) In any workweek, you must take at least 32 to 56 consecutive hours off duty, including at least two periods from midnight to 6:00 a.m.

(d) You must refuse dispatch or continuation of a trip if you believe you are not alert enough to drive safety.

(e) You must comply with the other specific limitations contained in this part.

§ 395.105 What are the penalties for failing to comply with this part?

(a) You are subject to civil penalties under 49 U.S.C. 521 and part 386 of this subchapter.

(b) The FMCSA, or an official of a State or political subdivision of a State with authority over the safety of your motor carrier operations, may order you out of service.

(c) Knowing and willful violations of this part may give rise to criminal penalties under 49 U.S.C. 521(b)(6).

§ 395.107 What definitions apply to this part?

The following definitions apply to this part:

Driving time means all time at the driving controls of a motor vehicle in operation.

Off-duty time means any period when you are relieved from duty and are free to attend to personal necessities including sleep, meals, refreshment, rest, and relaxation. Each period of off-duty time must be at least 30 minutes long. See also 29 CFR 785.16.

On-duty time means any period when you provide physical or mental exertion (whether burdensome or not) necessarily and primarily for the benefit of your motor carrier. It includes all time when you are on your motor carrier's premises, vehicles, equipment, or at other prescribed work places, except when your motor carrier expressly allows you to take rest breaks in vehicles or at a terminal. It includes all work for non-motor carrier employers. See also 29 CFR 785.16.

Workday means any fixed period of 24 consecutive hours.

Workweek means any fixed and regularly recurring period of seven consecutive workdays.

§ 395.109 What types of operations are exempt from the requirements of this part?

The following types of operations are exempt from the requirements of this part.

(a) *Agricultural operations.* The exemption in this section is based on Section 345(a)(1) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note).

(b) *Exemption.* The requirements of §§ 395.141–395.165 do not apply to you when you are transporting agricultural commodities within a State if the transportation takes place entirely within a 185-kilometer (100 air-mile) radius of the source of the commodities or the distribution point for the farm supplies during the planting and harvesting seasons in that State, as determined by the State. (*Note:* This exemption does not relieve you of the

responsibility to meet the general standards in § 395.101(c) or comply with the general requirements of § 395.103.)

(c) *After concluding exempt agricultural operations.* (1) If you ask for immediate rest after completing exempt agricultural transportation, you must take at least ten consecutive, uninterrupted hours off duty before returning to non-exempt work.

(2) You must not drive in non-exempt operations until you have met the following three conditions:

(i) You have been off duty for at least ten consecutive, uninterrupted hours, including a period from midnight to 6:00 a.m.

(ii) After providing exempt agricultural transportation for more than three consecutive days, you have been continuously off duty for a period of at least 32 to 56 consecutive hours that includes two consecutive midnight to 6:00 a.m. periods.

(iii) You have at least one hour off duty after 6:00 a.m.

(d) *Specific definitions.* The following definitions apply to this section:

(1) *Agricultural commodities* mean farm crops that are produced on a farm, but does not include timber.

(2) *Farm supplies* mean those items directly relating to the farming activities of planting, fertilizing, or harvesting crops that are delivered directly to a farm. This does not include materials that are used as a part of a non-farm business or materials to be used in a residence or home, including the farmer's residence.

(3) *Source of the commodities* means a farm where farm crops are produced from the soil, but does not include a farm planting or harvesting timber.

(e) *No preemptive effect.* This exemption does not preempt any other Federal, State, or local law for hours of service, safety of operation, or recordkeeping requirements.

Implementation Schedule

§ 395.111 When must I begin to comply with the rules in this part?

(a) You must begin complying with subpart A of this part applicable to each type of operation on [date 180 days after the date of publication of the final rule in the **Federal Register**].

(b) For Type 1 and 2 operations, you must comply fully with the requirements of subpart B and C of this part according to the following schedule. If your motor carrier on [date 180 days after the date of publication of the final rule in the **Federal Register**]:

(1) Operates more than 50 power units (owned or leased)—[date 2 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(2) Operates between 20 and 50 power units (owned or leased)—[date 3 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(3) Operates fewer than 20 power units (owned or leased)—[date 4 years and 180 days after the date of publication of the final rule in the **Federal Register**].

(c) To be in full compliance with the requirements of this part:

(1) *General.* All drivers must comply with the record keeping requirements of subpart B of this part.

(2) *Type 1 and 2 drivers.* All Type 1 and 2 drivers must:

(i) Have installed fully operational automated time record systems meeting the requirements of subpart C of part 394 of this subchapter.

(ii) Be properly trained and use the automated time record systems.

(d) If you are not yet required to comply with the rules in subpart B of this part, regarding records and reports, and opt not to comply, you must, at a minimum, comply with the recordkeeping rules 49 CFR 395.8 that were in effect on the day before [date 180 days after the date of publication of the final rule in the **Federal Register**] (See 49 CFR Parts 200–399 revised as of October 1, 1999.).

Types of Operations

§ 395.121 Are there different rules for different types of operations?

(a) There are five different types of operations. For each type, the regulations require specific off-duty, on-duty, and driving periods during each workday and workweek. See §§ 394.141 and 394.161.

(b) The five types of operations are as follows.

(1) Type 1. Long-haul operations that keep you away from your normal work reporting location for three or more consecutive workdays.

(2) Type 2. Long-haul operations that keep you away from your normal work reporting location overnight, but for less than three consecutive workdays.

(3) Type 3. You operate a CMV during two separate scheduled duty periods on the same workday. You return to your normal work reporting location and are released from work within 15 consecutive hours after beginning work. The two duty periods are separated by at least a three-hour off-duty period during the workday.

(4) Type 4. You return to your normal work reporting location and are released from work within 12 consecutive hours after beginning work.

(5) Type 5. Your driving duties are incidental to other primary activities. You return to your normal work reporting location and are released from work within 15 consecutive hours after beginning work. Your driving duties do not exceed 5 hours in any workday. You do not drive for a for-hire motor carrier.

§ 395.123 How do I determine which requirements apply to my work?

(a) Your work must fit within one of the categories described in § 395.121, and you must adjust your hours of operation to conform to the requirements applicable to that type of work.

(b) Your compliance with requirements applicable to the type of operation will be determined by the actual facts and circumstances of your work at the time compliance is required.

(c) If there is some reasonable doubt about your operational type, you must comply in good faith with the regulations applicable to the type that you believe best describes your work.

§ 395.125 May I drive in more than one type operation within a workweek?

Yes, you may move between the different types of operations after you have the appropriate off-duty time at the end of a workday or workweek for the previous type operation.

Fatigued Drivers

§ 395.131 What must I do if I become impaired by fatigue or illness?

(a) You must stop driving when you are drowsy, ill, or have other signs of fatigue. However, you may drive the motor vehicle to the nearest place where the vehicle can be parked without creating a greater risk to safety than continued operation would cause. Failure to comply with this paragraph may subject you and your motor carrier employer to penalties specified in 49 U.S.C. 521 or subpart G of part 386 of this subchapter.

(b) It is illegal for a motor carrier to take retaliatory actions against you for refusing to violate any Federal commercial motor vehicle safety regulations in this subchapter or State or local commercial motor vehicle safety laws, ordinances, or regulations. Retaliatory actions include, but are not limited to, being penalized, disciplined, discharged, discriminated against, demoted, blacklisted, and threatened.

(c) Actions contrary to paragraph (b) of this section are also violations of 49 U.S.C. 31105 and will subject your motor carrier employer to action by the U.S. Department of Labor which may require your employer to reinstate you and pay you back pay and

compensatory damages, among other things.

(d) If you believe that a motor carrier has taken retaliatory action against you in violation of 49 U.S.C. 31105, you may submit a complaint to any of the regional or area offices of the U.S. Department of Labor's Occupational Safety and Health Administration within 180 days of the retaliation for investigation. This is not a complete description of the requirements of 49 U.S.C. 31105. See 29 CFR part 1978 for details about how to file a complaint.

Daily Time

§ 395.141 How many consecutive hours must I remain off-duty before beginning each workday?

(a) You must remain off-duty for at least the following number of hours before starting duty each workday:

If you are in this type of operation (see § 395.121)	You must remain off-duty for a minimum of
Type 1	10 consecutive hours of each workday.
Type 2	10 consecutive hours of each workday.
Type 3	9 consecutive hours of each workday.
Type 4	12 consecutive hours of each workday.
Type 5	9 consecutive hours of each workday.

(b) *Exception.* (1) If you operate as a member of a team in a Type 1 operation, you may take your 10 hours off duty in sleeper berth equipment in no more than two off-duty periods of at least 5 consecutive hours each. The on-duty and driving time between the two sleeper-berth periods must be counted as part of the on-duty period that begins after the second sleeper-berth period. On-duty periods may be interrupted by off duty periods of less than 5 hours, but only periods of 5 or more consecutive hours in a sleeper berth count towards the required 10-hour off-duty period. You continue to be limited by the on-duty and driving rules for the workday and workweek.

(2) Sleeper berth equipment is defined in § 393.76 of this subchapter.

§ 395.143 What must I do when my minimum consecutive off-duty hours are interrupted?

(a) If your motor carrier interrupts your minimum consecutive off-duty hours, the minimum off-duty period must start anew at the conclusion of the interruption. In addition, you must count the time required to deal with the interruption as on-duty time.

(b) ''Interrupt,'' in this section, means your motor carrier requires you to undertake any responsibility for the carrier, including, but not limited to any of the following:

(1) Answer any type of communication device, including, but not limited to, a telephone, pager, beeper, facsimile mail machine, doorbell, global positioning system message, or any other type of device.

(2) Contact it for a new dispatch.

(3) Contact it about the status of a trip or the condition of a load.

(c) If your motor carrier is required to pay you minimum wages under the minimum wage provisions of the Fair Labor Standards Act (29 U.S.C. 206), the counting-of-hours principles in 29 CFR part 785 may also apply.

§ 395.145 Must I take additional off-duty time after I begin working?

(a) If you are a driver in a Type 1, 2, or 5 operation, you must take at least two additional off-duty hours each workday to nap, rest, or attend to personal necessities. This two-hour period may be taken at your discretion at any location, including the CMV. You may divide the two-hour period into periods of not less than 30 minutes.

(b) If you are a driver in a Type 3 operation, you must have at least 3 consecutive hours off duty between your two split work shifts.

§ 395.147 How long may I be on duty?

(a) Type 1–4 drivers may be on duty no more than 12 hours within a 14-consecutive-hour period in any workday.

(b) Type 5 drivers may be on duty no more than 13 hours within a 15-consecutive-hour period in any workday.

§ 395.149 How long may I drive motor vehicles?

(a) You must not drive more than 12 hours per workday in Type 1, 2, 3, or 4 operations.

(b) You must not drive more than 5 hours per workday in a Type 5 operation.

Weekly Time

§ 395.161 How many consecutive hours per workweek must I take off duty?

(a) You must take an off-duty period of at least 32 to 56 consecutive hours that includes at least two consecutive midnight to 6:00 a.m. periods before the start of the next workweek.

(b) In Type 1 operations, for every two consecutive workweeks, you must take two such off-duty periods with a combined total of at least 112 hours.

(c) Exception. If you operate as a driver exclusively for a groundwater well drilling operation, you must take at least 24 consecutive hours off duty at the end of each workweek. This exception is required by 49 U.S.C. 31136 note. To meet the standards of this part, however, you should have the opportunity to sleep during two consecutive midnight to 6:00 a.m. periods of time and not begin work until 7:00 a.m.

§ 395.163 When may I start work after being off duty at the end of a workweek?

You may start work after being off duty at the end of a workweek as follows:

You stop work between 11:01 p.m. on the workday immediately before this day and 11:00 p.m. on this workday	You may begin to work the next workweek on this workday no earlier than 7:00 a.m.
(a) Saturday	Monday
(b) Sunday	Tuesday
(c) Monday	Wednesday
(d) Tuesday	Thursday
(e) Wednesday	Friday
(f) Thursday	Saturday
(g) Friday	Sunday

§ 395.165 How many hours per week may I work?

(a) If you are a driver in a Type 1, 2, 3, or 4 operation, you may be on-duty up to, but no more than, 60 hours in any workweek.

(b) If you are a driver in a Type 5 operation, you may be on-duty up to, but no more than, 78 hours in any workweek.

(c) Exception. If you are a Type 1 driver on a trip requiring two or more consecutive workweeks away from your normal work reporting location, you may average two weekly maximum on-duty periods, *i.e.*, 120 hours. The longer period may consist of no more than 72 hours on duty before the end of the workweek.

Summary of Hour Limits

§ 395.167 Can these requirements be summarized in a chart?

In general, the following hourly limits apply, subject to any specific conditions listed in §§ 395.141, 395.145, 395.147, 395.149, 395.161, 395.163, and 395.165:

	In this type of operation, the driver	Must have this many consecutive hours off duty every workday	Must have this many additional hours off duty every workday	May be on duty for up to this many hours every workday	May drive only this many hours every workday	Must have an off-duty period every workweek that includes at least two consecutive midnight to 6:00 a.m. periods and at least this many consecutive hours off duty	May drive only this many hours every workweek	May be on duty only this many hours every workweek
(a)(1) One-week	Type 1	≥10	≥2	≤12	≤12	≥32 to 56	≤60 standard.	≤60 standard
(2) Two-week flexible	Type 1	≥10	≥2	≤12	≤12	One week ≥32 to 56 & Other week ≤80.	One week ≤72 & Other week ≤48.	One week ≤72 & Other week ≤48
(b)	Type 2	≥10	≥2	≤12	≤12	≥32 to 56	≤60	≤60
(c)	Type 3	≥9	≥3	≤12	≤12	≥32 to 56	≤60	≤60
(d)	Type 4	≥12		≤12	≤12	≥32 to 56	≤60	≤60
(e)	Type 5	≥9	≥2	≤13	≤5	≥32 to 56	≤30	≤78

Loading and Unloading Practices

§ 395.169 What are the loading and unloading responsibilities of drivers?

(a) Your motor carrier must inform you about your responsibility for loading and unloading services. See § 394.169 of this subchapter.

(b) If you are responsible for loading and unloading cargo, you must include all such time in your daily on-duty hours. See also 29 CFR part 785.

(c) The OMB has assigned the information collection requirements of paragraph (a) of this section the number 2126–0001.

Subpart B—Records and Reports

Time Records To Be Prepared and Kept By Drivers

§ 395.201 What records must I make and maintain while working?

(a) *Type 1 and 2 drivers.* If you are a driver in a Type 1 or 2 operation, you must accurately record your driving and on-duty time records in an automated time record system meeting the requirements of § 394.201 and subpart C of part 394 of this subchapter and any additional requirements imposed on you by your motor carrier.

(b) If your motor carrier is not yet required to comply with the rules in subpart B of part 394, regarding records and reports, and opts not to comply, you must, at a minimum, comply with the rules that were in effect on the day before [date 180 days after the date of publication of the final rule in the **Federal Register**] (See 49 CFR Parts 200–399 revised as of October 1, 1999.).

(c) If you are a driver in a Type 1 or 2 operation, you are legally responsible for the accuracy of off-duty, on-duty, and driving-time records prepared by you.

(d) *Type 3, 4, and 5 drivers.* If you are a driver in a Type 3, 4, or 5 operation, you are not required to make or maintain on-duty and off-duty time records, unless your motor carrier requires you to do so. You are legally responsible for the accuracy of rest and work time records prepared by you.

(e)(1) The OMB has assigned the information collection requirements of paragraph (a) of this section the number 2126–0001.

(2) The OMB has assigned the information collection requirements of paragraph (d) of this section the number 1215–0017. The U.S. Department of Labor's Wage and Hour Division regulations require your motor carrier to create other records, if your motor carrier is a subject employer. See 29 CFR part 516.

§ 395.203 Must I prepare time records in a particular order or on particular forms?

(a) If you are a driver in a Type 1 or 2 operation, you must record and maintain records in the order or form prescribed by your motor carrier for its automated time record system.

(b) If you are a driver in a Type 3, 4, or 5 operation, a particular order or form of records is not required by this part. Your motor carrier may require that you create the records in its own format in paper, microfilm, microfiche, electronic, or automated time record format.

§ 395.205 What are my responsibilities if I use an automatic time record system to record my duty status?

You must:

(a) Record accurately all your off-duty, driving, and on-duty time, including the following.

(1) Daily starting and ending times for each work period and the place where you start and end each work period (i.e., town and State, town and Province, or location code of such locations).

(2) Intervening times and locations during each work period when you transact business, e.g., picking up freight or passengers, fueling stops, deliveries, roadside inspections.

(3) Intervening times and locations during each work period when you take your required 2 hours off duty for rest and meals.

(b) Make sure you understand the system and how it operates.

(c) Follow the instructions of your motor carrier and the manufacturer of the automatic time record system.

(d) Retain in the commercial motor vehicle the records prescribed in paragraph (a) of this section for the current workday and the previous seven workdays.

(e) Submit or forward your original time record and all documents obtained during each trip supporting the time record to your motor carrier within 13 days after completing each record.

(f) Produce the current records from the automatic time record system upon the request of a special agent of the FMCSA or any authorized law enforcement official.

(g) If the system fails:

(1) Reconstruct accurate records for the current day and the previous seven days, in the manner prescribed in paragraph (a) of this section, using the format required by your motor carrier.

(2) Prepare a written record of all subsequent time periods, in the manner prescribed in paragraph (a) of this section, until the system is operational, using the format required by your motor carrier.

(3) Produce the current records upon the request of a special agent of the FMCSA or any authorized law enforcement official.

Inspection of Records

§ 395.211 Must I present my equipment and records if an FMCSA special agent asks to inspect them?

You must immediately comply with a request by an FMCSA special agent or

other authorized law enforcement official who displays proper credentials and demands to inspect your equipment and records.

§ 395.213 What records may be used to determine my compliance with this part?

FMCSA officials or a State or local government official with authority over the safety of your motor carrier operations may use any information, whether or not in your possession, to determine your compliance with the requirements of this part and to verify the accuracy of the records you are required to maintain.

§ 395.215 Where must I keep records available for inspection?

(a) *Place of records for type 1 or 2 drivers.* (1) As indicated in § 395.205(d) if you are a driver in a Type 1 or 2 operation, you must keep time records required by §§ 395.201 and 395.205 in your possession while on duty and for seven consecutive days after the record is made.

(2) You must keep originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, all bills of lading and all billings to customers (not including individual sales slips, cash register tapes, or the like), and any other receipts in your possession while on duty. If the documentation for previous trips have been given to your motor carrier, you must have all documentation for your current trip in your possession.

(3) You must keep accessible while on duty and for at least seven consecutive days records of items to be added to and deducted from your pay or compensation for your services in the usual course of business operations, including:

(i) Total additions to or deductions from pay or compensation for each pay or compensation period including the dates, amounts, and nature of the items which make up the total additions and deductions.

(ii) All records used by you in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in additions to or deductions from your pay or compensation.

(b) *Location and inspection of records for type 3, 4, and 5 drivers.* Customer orders or invoices received, incoming or outgoing shipping or delivery records, all bills of lading and all billings to customers (not including individual sales slips, cash register tapes, or the like), and any other receipts and time records for drivers in Types 3, 4, and 5 operations need only be available for inspection and transcription at your motor carrier's principal place of business.

(c)(1) The OMB has assigned the information collection requirements of paragraph (a) of this section the number 2126–0001.

(2) The OMB has assigned the information collection requirements of paragraph (b) of this section the number 1215–0017. The U.S. Department of Labor's Wage and Hour Division regulations require your motor carrier to provide other records for inspection, if your motor carrier is a subject employer. See 29 CFR part 516.

Subpart C—Roadside Out-Of-Service Orders

§ 395.301 What must I do if I am declared out of service for violations of this part?

You must not drive a CMV until you have taken the minimum consecutive hours off duty required to restore compliance with §§ 395.141, 395.161, and 395.163; complied with the terms of the out-of-service order; and, for Type 1 or 2 drivers only, updated your time record(s) to show the time on duty, driving, and off duty accurately.

Subpart D—Emergency Operations

§ 395.401 What must I do if I need immediate rest after providing direct assistance in an emergency?

(a) Inform your motor carrier.

(b) Take at least ten consecutive, uninterrupted hours off duty before returning to your normal work reporting location.

§ 395.403 What conditions must I meet before I operate in interstate commerce after providing direct assistance in an emergency?

You must not drive in interstate commerce until you have met the following three conditions:

(a) You have been off duty for at least ten consecutive hours, including a period from midnight to 6:00 a.m.

(b) After providing direct assistance for more than three consecutive days, you have been continuously off duty for a period of time that includes two consecutive midnight to 6:00 a.m. periods and at least 32 to 56 consecutive hours.

(c) You have had at least one hour off duty after 6:00 a.m.

PART 398—TRANSPORTATION OF MIGRANT WORKERS

8. The authority citation for part 398 is revised to read as follows.

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

9. Section 398.6 is revised to read as follows:

§ 398.6 Hours of rest and work; minimum rest and maximum work time.

(a) If you are a motor carrier, you must comply with the requirements of part 394 of this subchapter when transporting migrant workers.

(b) If you are a driver, you must comply with the requirements of part 395 of this subchapter when transporting migrant workers.

[FR Doc. 00–10703 Filed 4–26–00; 4:10 pm]

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Federal Register

Tuesday,
May 2, 2000

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 32 and 52

Federal Acquisition Regulation; Advance Payments for Non-Commercial Items; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 1999–016]

RIN 9000–AI74

Federal Acquisition Regulation; Advance Payments for Non-Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to permit federally insured credit unions to participate in the maintenance of special accounts for advance payments.

DATES: Interested parties should submit comments in writing on or before July 3, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to:
farcase.1999–016@gsa.gov

Please submit comments only and cite FAR case 1999–016 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAR case 1999–016.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 32.4, Advance Payments for Non-Commercial Items, requires, unless exempted by FAR 32.409–3(e) or (f), that contractors deposit advance payments in special accounts separate from their general or other funds. FAR 32.411 and other FAR text exclude credit unions from participating in the maintenance of these special accounts by requiring that contractors establish these special accounts only at banks that are members of the Federal Reserve System (FRS) or insured by the Federal Deposit Insurance Corporation (FDIC). However, many credit unions are federally insured through the National Credit Union Administration (NCUA). Therefore, these credit unions are able to provide the Government a measure of security for Federal funds advanced to contractors, as well as those banks that are members of the FRS or insured by FDIC.

The proposed rule amends FAR 32.4 and FAR 52.232–12 to change certain terminology (*e.g.*, change the word ''bank'' to financial institution'') to provide contractors an additional option of depositing advance payments in special accounts maintained by credit unions insured by NCUA. This revision will foster competition among financial institutions who are in the business of providing special accounts for advance payment funds, without increasing the risk to the Government.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to the very limited number of contractors that receive advance payments and deposit these payments in special accounts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts 32 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601 *et seq.*, (FAR case 1999–016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52:

Government procurement.

Dated: April 27, 2000.

Edward C. Loeb,

Director Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 32 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Revise paragraph (a)(1) of section 32.407 to read as follows:

32.407 Interest.

(a) * * *

(1) The published prime rate of the financial institution (depository) in which the special account (see 32.409–3) is established; or

* * * * *

32.408 [Amended]

3. Amend paragraph (b)(4) of section 32.408 by removing ''bank'' both times it appears and adding ''financial institution'' in its place.

4. Amend section 32.409–3 as follows:

a. In paragraph (a) remove ''bank'' and add ''special'' in its place;

b. In paragraphs (b)(2), (c)(2), and (e) remove ''bank''.

c. Revise paragraph (f)(1); and

d. In paragraph (g) remove ''bank'' both times it appears.

The revised text reads as follows:

32.409–3 Security, supervision, and covenants.

* * * * *

(f) * * *

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

* * * * *

5. In section 32.410, revise the second sentence in paragraph (a)(4) of the ''Findings, Determination, and Authorization for Advance Payments Findings'' to read as follows:

32.410 Findings, determination, and authorization.

* * * * *

(a) * * *

(4) * * * The clause requires that all payments will be deposited in a special account at the contractor's financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. * * *

* * * * *

6. The section heading and text of 32.411 is revised to read as follows:

32.411 Agreement for special account at a financial institution.

The contracting officer shall use substantially the following form of agreement for a special account for advance payments:

AGREEMENT FOR SPECIAL ACCOUNT

This agreement is entered into this day of , 20 , between the United States of America, (the Government) represented by the Contracting Officer executing this agreement, [Insert the name of the Contractor], a [Insert the name of the State of incorporation] corporation (the Contractor), and , a financial institution operating under the laws of , located at the financial institution.

RECITALS

(a) Under date of , 20 , the Government and the Contractor entered into Contract No. , or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any ''insured'' bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated '' [Insert the Contractor's name], [Insert the name of the Government agency] Special Account.''

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on [Insert the name of the agency] stationery and purporting to be signed by, or by the direction of or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the [Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will promptly notify [Insert the name of the administering office].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution's published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]

Each of the parties to this agreement has executed the agreement on , 20 .

[Signatures and Official Titles]

32.412 [Amended]

7. Amend paragraph (f) of section 32.412 by removing ''bank''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.232–12 as follows:

a. Revise the date of the clause;

b. Revise paragraph (b);

c. Remove ''bank'' from paragraphs (c) and (d);

d. Revise paragraph (f)(3);

e. Revise paragraph (g);

f. Remove ''bank'' from paragraphs (h), (k)(1) introductory text, (k)(1)(iv), (k)(2)(i), and (m)(1) each time it appears.

g. Revise paragraph (p)(11);

h. Amend Alternate II by revising the date to read ''(DATE)''; and removing ''bank'' from paragraph (c);

i. Amend Alternate V by revising the date to read ''(DATE)''; and removing from the introductory paragraph ''bank''; and

j. Revise the heading of the clause in Alternate V and paragraph (m)(11).

The revised text reads as follows:

52.232–12 Advance Payments.

* * * * *

ADVANCE PAYMENTS (DATE)

* * * * *

(b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special account with the [insert the name of the financial institution]. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

* * * * *

(f) * * *

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92–41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

* * * * *

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an ''insured'' bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or is a credit union insured by the National Credit Union Administration.

* * * * *

(p) * * *

(11) Deposit any of its fund except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

* * * * *

ADVANCE PAYMENTS WITHOUT SPECIAL ACCOUNT (DATE)

* * * * *

(m) * * *

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

* * * * *

[FR Doc. 00–10906 Filed 5–1–00; 8:45 am]

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Federal Register

Tuesday,
May 2, 2000

Part IV

The President

Executive Order 13151—Global Disaster Information Network

Federal Register
Vol. 65, No. 85
Tuesday, May 2, 2000

Presidential Documents

Title 3—

The President

Executive Order 13151 of April 27, 2000

Global Disaster Information Network

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a Global Disaster Information Network to use information technology more effectively to reduce loss of life and property from natural and man-made disasters, it is hereby ordered as follows:

Section 1. *Policy.* (a) It is the policy of this Administration to use information technology more effectively to coordinate the Federal Government's collection and dissemination of information to appropriate response agencies and State governments to prepare for and respond to natural and man-made disasters (disasters). As a result of changing population demographics in our coastal, rural, and urban areas over the past decades, the loss of life and property (losses) from disasters has nearly doubled. One of the ways the Federal Government can reduce these losses is to use technology more effectively to coordinate its collection and dissemination (hereafter referred to collectively as ''provision'') of information which can be used in both planning for and recovering from disasters. While many agencies provide disaster-related information, they may not always provide it in a coordinated manner. To improve the provision of disaster-related information, the agencies shall, as set out in this order, use information technology to coordinate the Federal Government's provision of information to prepare for, respond to, and recover from domestic disasters.

(b) It is also the policy of this Administration to use information technology and existing channels of disaster assistance to improve the Federal Government's provision of information that could be helpful to foreign governments preparing for or responding to foreign disasters. Currently, the United States Government provides disaster-related information to foreign governments and relief organizations on humanitarian grounds at the request of foreign governments and where appropriate. This information is supplied by Federal agencies on an ad hoc basis. To increase the effectiveness of our response to foreign disasters, agencies shall, where appropriate, use information technology to coordinate the Federal Government's provision of disaster-related information to foreign governments.

(c) To carry out the policies in this order, there is established the Global Disaster Information Network (Network). The Network is defined as the coordinated effort by Federal agencies to develop a strategy and to use existing technical infrastructure, to the extent permitted by law and subject to the availability of appropriations and under the guidance of the Interagency Coordinating Committee and the Committee Support Office, to make more effective use of information technology to assist our Government, and foreign governments where appropriate, by providing disaster-related information to prepare for and respond to disasters.

Sec. 2. *Establishment.* (a) There is established an Interagency Coordinating Committee (Committee) to provide leadership and oversight for the development of the Network. The Office of the Vice President, the Department of Commerce through the National Oceanic and Atmospheric Administration, and the Department of State, respectively, shall designate a representative to serve as Co-chairpersons of the Committee. The Committee membership shall comprise representatives from the following departments and agencies:

(1) Department of State;

(2) Department of Defense;

(3) Department of the Interior;

(4) Department of Agriculture;

(5) Department of Commerce;

(6) Department of Transportation;

(7) Department of Energy;

(8) Office of Management and Budget;

(9) Environmental Protection Agency;

(10) National Aeronautics and Space Administration;

(11) United States Agency for International Development;

(12) Federal Emergency Management Agency; and

(13) Central Intelligence Agency.

At the discretion of the Co-chairpersons of the Committee, other agencies may be added to the Committee membership. The Committee shall include an Executive Secretary to effect coordination between the Co-chairpersons of the Committee and the Committee Support Office.

(b) There is established a Committee Support Office (Support Office) to assist the Committee by developing plans and projects that would further the creation of the Network. The Support Office shall, at the request of the Co-chairpersons of the Committee, carry out tasks taken on by the Committee.

(c) The National Oceanic and Atmospheric Administration shall provide funding and administrative support for the Committee and the Support Office. To the extent permitted by law, agencies may provide support to the Committee and the Support Office to assist them in their work.

Sec. 3. *Responsibilities.* (a) The Committee shall:

(1) serve as the United States Government's single entity for all matters, both national and international, pertaining to the development and establishment of the Network;
(2) provide leadership and high-level coordination of Network activities;
(3) provide guidance for the development of Network strategies, goals, objectives, policies, and legislation;
(4) represent and advocate Network goals, objectives, and processes to their respective agencies and departments;
(5) provide manpower and material support for Network development activities;
(6) develop, delegate, and monitor interagency opportunities and ideas supporting the development of the Network; and
(7) provide reports, through the Co-chairpersons of the Committee, to the President as requested or at least annually.

(b) The Support Office shall:

(1) provide management and administrative support for the Committee;
(2) develop Network strategies, goals, objectives, policies, plans, and legislation in accordance with guidance provided by the Committee;
(3) consult with agencies, States, nongovernment organizations, and international counterparts in developing Network development tasks;
(4) develop and make recommendations concerning Network activities to the agencies as approved by the Committee; and
(5) participate in projects that promote the goals and objectives of the Network.

Sec. 4. *Implementation.* (a) The Committee, with the assistance of the Support Office, shall address national and international issues associated with the development of the Network within the context of:

(1) promoting the United States as an example and leader in the development and dissemination of disaster information, both domestically and abroad, and, to this end, seeking cooperation with foreign governments and international organizations;

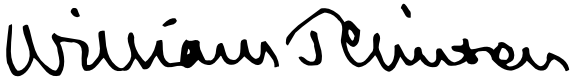
(2) striving to include all appropriate stakeholders in the development of the Network; and

(3) facilitating the creation of a framework that involves public and private stakeholders in a partnership for sustained operations of the Network.

(b) Intelligence activities, as determined by the Director of the Central Intelligence Agency, as well as national security-related activities of the Department of Defense and of the Department of Energy, are exempt from compliance with this order.

Sec. 5. *Tribal Governments.* This order does not impose any requirements on tribal governments.

Sec. 6. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable by law, by a party against the United States, its officers, its employees, or any other person.



THE WHITE HOUSE,
April 27, 2000.

[FR Doc. 00–11070
Filed 5–1–00; 8:45 am]
Billing code 3195–01–P

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 2, 2000

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—
California; published 5-1-00

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease; disease status change—
South Africa; published 4-17-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Public mobile services—
Revision; published 5-2-00

INTERIOR DEPARTMENT

Hearings and appeals procedures:
Indian affairs—
Indian trust estates; summary distributions authority; technical amendment; published 5-2-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
CFM International; published 3-28-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Federal Seed Act:
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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
Ports of entry—
Honolulu, HI; limited port of entry designation; Hawaii Animal Import Center closed; comments due by 5-8-00; published 3-9-00

Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle, bison, goats, and captive cervids—
State and area classifications; comments due by 5-8-00; published 5-1-00

Viruses, serums, toxins, etc.:
Autogenous biologics; test summaries, etc.; comments due by 5-8-00; published 3-8-00

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Findings on petitions, etc.—
Smalltooth and largetooth sawfish; comments due by 5-9-00; published 3-10-00

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; comments due by 5-8-00; published 4-6-00
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Atlantic highly migratory species—
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ENERGY DEPARTMENT

Acquisition regulations:
Management and operating contracts; comments due by 5-12-00; published 3-13-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Pharmaceuticals production; comments due by 5-10-00; published 4-10-00

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
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Mississippi; comments due by 5-8-00; published 4-7-00
Pennsylvania; comments due by 5-8-00; published 4-7-00

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-10-00; published 4-10-00
Georgia; comments due by 5-8-00; published 4-7-00
Indiana; comments due by 5-11-00; published 4-11-00
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Freedom of Information Act; implementation; comments due by 5-12-00; published 4-12-00

Superfund program:
National oil and hazardous substances contingency plan—
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National priorities list update; comments due by 5-10-00; published 4-10-00

Toxic substances:
Methyl Tertiary Butyl Ether (MTBE); elimination or limitation as a fuel additive in gasoline; comments due by 5-8-00; published 3-24-00

FEDERAL ELECTION COMMISSION

Presidential primary and general election candidates; public financing:
Electronic filing of reports; comments due by 5-11-00; published 4-11-00

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HEALTH AND HUMAN SERVICES DEPARTMENT

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac):
New housing goals for 2000—2003 calendar years; comments due by 5-8-00; published 3-9-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
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San Diego fairy shrimp; comments due by 5-8-00; published 3-8-00
Spectacled eider; comments due by 5-8-00; published 2-8-00
Steller's eider; comments due by 5-12-00; published 3-13-00

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Postage and fees refunds; unused adhesive stamps and stamps affixed to unmailed matter; comments due by 5-9-00; published 3-10-00

TRANSPORTATION DEPARTMENT

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Anchorage regulations and ports and waterways safety:
OPSAIL 2000, Deleware River, PA; regulated areas; comments due by 5-12-00; published 3-28-00
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Ports and waterways safety:
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Newport, RI; safety zone; comments due by 5-8-00; published 3-22-00

Regattas and marine parades, anchorage regulations, and ports and waterways safety:
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TRANSPORTATION DEPARTMENT
Federal Aviation Administration
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TREASURY DEPARTMENT
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TREASURY DEPARTMENT
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Exclusions from gross income of foreign corporations; comments due by 5-8-00; published 2-8-00
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1658/P.L. 106–185

Civil Asset Forfeiture Reform Act of 2000 (Apr. 25, 2000; 114 Stat. 202)

S.J. Res. 43/P.L. 106–186

Expressing the sense of Congress that the President of the United States should encourage free and fair elections and respect for democracy in Peru. (Apr. 25, 2000; 114 Stat. 226)

Last List April 18, 2000

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